THE

Judges Resolutions

Upon the Several

Statutes

Concerning

BANKRUPTS,

WITH

The like Resolutions on the Statutes of 13 *Eliz.* and 27 *Eliz.* touching fraudulent CONVEYANCES.

By *GEORGE BILLINGHURST* of *Grays-Inne*, Esq;

LONDON,

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I do allow the Printing of this Book, Intituled, *The Judges Resolutions upon the Statute concerning Bankrupts.*

28th. June, 1676.

FRA: NORTH.

Gentle Reader,

THou haſt here a methodical digeſtion of the ſeveral Statutes concerning Bankrupts, preſented to thy view; together with ſuch Expoſitions as have been made of the ſeveral parts of them by the Learned Judges of this Kingdom, ſince they came forth.

And in regard the matter hereof may concern moſt men, I thought it would not be unneceſſary to be publiſhed. For although there be a Reading in Print upon ſome of thoſe Statutes

more full of abſtruſe Notions and Learning than this is. yet I have ſome ground to believe that this will be thought for ordinary capacities, and the generality of men, much more uſeful. I have alſo added hereunto the ſeveral Statutes of 13 El. *and* 27 El. *touching fraudulent conveyances, with the like Expoſition of the Learned Judges on them in ſeveral caſes annexed, which may be likewiſe of uſe unto thee. Farewel.*

T. B.

What a Bankrupt is, and his Deſcription.

34. *Hen.* 8. *Chap.* 4.

THe Lord Chancellor, Treaſurer, *&c.* ſhall take order with Bankrupts Bodies, Lands, and Goods for the payment of their Debts. Al. 13 *El.* 7. 1 *Jac.* 15. 21 *Jac.* 19.

13 *Eliz. Chap.* 7.

Who is a Bankrupt, how and by whom his Body, Lands, and Goods ſhall be ordered for the payment of his Creditors.

FOraſmuch as notwithſtanding the Statute made againſt Bankrupts, in the xxxiii year of

the Reign of our late Sovereign Lord King Henry the eighth, those kind of persons have, and do still increase into great and excessive numbers, and are like more to do, if some better provision be not made for the repression of them. And for a plain declaration to be made and set forth, who is and ought to be taken and deemed for a Bankrupt: Therefore be it enacted and established by the Authority of this present Parliament, that if any Merchant or other person, using or exercising the trade of Merchandize, by way of Bargaining, Exchange, Rechange, Bartry, Chevisance, or otherwise, in gross, or by retail, or seeking his or her trade of living, by buying and selling, and being Subject born of this Realm, or of any the Queens Dominions, or Denizen, (thence the first day of this present Parliament hath,

or

or at any time hereafter shall depart the Realm, or begin to keep his or her House or Houses, or otherwise to absent him or her self, or take Sanctuary, or suffer him or her self willingly to be arrested for any debt or other thing, not grown or due for Money delivered, Wares sold, or any other just and lawful cause or good consideration or purposes, hath or will suffer him or her self to be outlawd, or yield him or her self to prison, or depart from his or her dwelling House or Houses, to the intent or purpose to defraud or hinder any of his or her Creditors, being also a Subject born, as is aforesaid, of the just Debt or duty of such Creditor or Creditors, shall be reputed, deemed and taken for a Bankrupt.

And be it enacted by the Authority aforesaid, That the Lord Chancellour of England, or Lord

Keeper of the great Seal of England for the time being, upon every Complaint made to him in writing, against any such person or persons being Bankrupt, as is before recited, shall have full power and Authority by Commission under the great Seal of England, to name, assign, and appoint such wise and honest, discreet persons, as to him shall seem good, Who, or the most part of them, by vertue of this Act and of such Commission, shall have full power and authority to take by their discretions such order and direction, with the body and bodies of such person, where soever he or she may be found, either in his or her House or Houses, Chamber or Chambers, or elsewhere, as well by imprisonment of his or her body or bodies, as also with all his or her Lands, Tenements, Hereditaments, as well Copy or Customary-hold, as Free-hold, which

which he or shee shall have in his or her own right, before he or she became Bankrupt, and also with all such Lands, Tenements and Hereditaments, as such person shall have purchased, or obtained for money, or other recompence joyntly with his wife, children or childe, to the only use of such offender, or offenders, or of, or for such use, interest, right or title, as such offender or offenders then shall have in the same, which he or she may lawfully depart with-al, or with any person or persons, of trust to any secret use of such offender or offenders, and also with his or her money, goods, chattels, wares, merchandises and debts, wheresoever they may be found or known, and saule the said Lands, Tenements, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, to be searched, viewed rented, and apprayled to the best

value

value they may, and by Deed indented, enrolled in one of the Queens Majesties Courts of Record, to make sale of the said Lands, Tenements, and Hereditaments, and of all Deeds, Writings, and Evidences, touching only the same, belonging to such offender or offenders, debtor or debtors, and also of all Fees, Annuities, Offices, Goods, and Chattels, or otherwise to order the same for true satisfaction and payment of the said Creditors: that is to say, To every of the said Creditors a portion, rate and rate like, according to the quantity of his or their debts: and that every direction, order, bargain, sale, and other things done by the said persons so authorised, as is aforesaid, in form aforesaid, shall be good and effectual in the Law, to all intents, constructions, and purposes, against the said offender or of-

offenders, debtor or debtors, his or their wife or wives, heir and heirs, childe and children, and such person and persons, as by such joynt purchase with the said offender or offenders, as is aforesaid, have or shall have any estate or interest in the premisses, and against all other person and persons claiming by, from, or under such offender or offenders, debtor or debtors, by any Act or Acts had, made, or done after any such person shall become Bankrupt, as is aforesaid, and also against the Lords of the Mannors, whereof the said Copyhold or Customary lands they holden, their heirs, successors, and assigns, and every of them.

Provided always, and be it enacted by the Authority aforesaid, That all and every person or persons, to whom any such sale of Copyhold, or Customary Lands, or Tenements shall be made,

shall

shall before such time as they or any of them shall enter or take any profit of the same Lands or Tenements, agree and compound with the Lords of the Mannors of whom the same shall be holden, for such fines or incomes as heretofore have been most usual, and accustomed to be yielded or paid therefore: and that upon every such agreement or composition, the said Lords for the time being, at the next Court to be holden at, or for the said Mannors, shall not only grant unto the said Vendee or Vendees, upon request, the same Copy of Customary Lands or Tenements, by Copy of Court Roll, of the same Mannors, for such estate or interest as to them shall be sold, and reserving the antient Rents, Customes, and Services: but also in the same Court admit them Tenants of the same Copy of Customary

Lands,

Lands, as other Copyholders of the same Mannors, have been wont to be admitted, and to receive their fealty accordingly.

Provided always, and be it enacted by the Authority aforesaid, That such of the said Commissioners as shall put the said Commission in execution, shall upon lawful request to them made by the said Bankrupt, not only make a true declaration to the same Bankrupts, of the imploying and bestowing of their said Lands, Tenements, Offices, fees, Goods, Chattels, and debts so payed and satisfied to their said Creditors, but also make payment of the overplus of the same (if any such shall be) to the said Bankrupts, their Executors, Administrators, or Assigns.

And be it further enacted by the Authority aforesaid, that if after any such act or offence committed, and complaint thereof made

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to the said Commissioners so to be appointed, as is aforesaid, or the more part of them, by any party grieved, as is aforesaid, concerning the premisses, knowing, supposing, or suspecting any of the goods, chattels, wares, merchandizes, or debts of such offender or offenders, debtor or debtors, to be in custody, use, occupying, keeping, or possession of any person or persons, or any person or persons to be indebted to any such offender or offenders, do make relation thereof to the said Commissioners so to be appointed, or the more part of them: that then the said Commissioners, or the most part of them, shall by vertue hereof and of the said Commission, have full power and authority to send for, and call before them by such Process, ways or means, as they shall think convenient by their discretions, all and every such per-

perſon and perſons ſo known, ſuſpected, or ſuppoſed to have any ſuch goods, chattels, wares, merchandizes, or debts, in his or their cuſtody, uſe, occupation, keeping, or poſſeſſion, or ſuppoſed, or ſuſpected to be indebted, to ſuch offender or offenders, and upon their appearance, to examine them, and every of them, as well by their Oaths as otherwiſe, by ſuch ways and means as the ſaid Commiſſioners, or the more part of them, by their diſcretions ſhall think meet and convenient, for and upon the ſpecialty, certainty, true declaration, and knowledge of all and ſingular ſuch goods, chattels, wares, merchandizes, and debts of any ſuch offender or offenders, as be ſuppoſed or ſuſpected to be in his or their cuſtody, uſe, occupation or poſſeſſion, and all ſuch debts as by them or any of them, ſhall be ſuppoſed or ſuſpected to

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be owing to any such offender or offenders.

And if any such person or persons upon such examination, do not disclose and plainly declare, and shew the whole truth of such things as he or they shall be examined of concerning the premisses to his knowledge, or do deny to swear: then every such person or persons so denying to swear, or being examined do not declare the plain and whole truth concerning the premisses, upon due proof thereof to be made before the said Commissioners, or the more part of them so to be appointed, as is aforesaid, by witness, examination, or otherwise, as to the said Commissioners, or the more part of them shall seem sufficient in that behalf, shall lose and forfeit double the value of all such goods, chattels, wares, merchandizes, debts, by them or any of them so concealed,

cealed, and not wholly and plainly declared and shewed: which forfeiture shall be levied by the said Commissioners, or the more part of them, of the Lands, Tenements, Hereditaments, Goods, and Chattels, of such person so denying to swear, or not disclosing the whole truth, as is aforesaid, by such ways and means, and in such manner and form, as is before limited and appointed for the principal offender or offenders, debtor, or debtors. and the same forfeiture or forfeitures to be distributed, or imployed to and for the satisfaction and payments of the debts of the said creditor or creditors, in such like manner, rate, and form, as is above declared, concerning the ordering of the lands and tenements, offices, fees, goods, and chattels, of such offender or offenders, debtor or debtors as is aforesaid.

And be it further enacted,

That if at any time before or after that any such person or persons departeth the Realm, or shall keep his or their house or Houses, or otherwise absent him or themselves, or take sanctuary, or suffer him or themselves to be arrested, outlawd, or yield his or their bodies to prison, as is aforesaid: any person or persons do fraudulently by covin or collusion, claim, demand, recover, possess, or detain any debts, duties, goods, chattels, lands, or tenements, by writing, trust, or otherwise, which were or shall be due, belonging, or appertaining to any such offender or offenders. other than such as he or they can and do prove to be due by right and conscience in form aforesaid, for money payed, wares delivered, or other just consideration or cause reasonable, to the just value thereof, before the said Commissioners so to be appointed, or

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the moze part of them, as is a-
foꝛesaid, and the same to proceed
(bona fide) without fraud oꝛ cou-
vin: that then every such peꝛson
oꝛ peꝛsons so craftily demanding,
claiming, having, possessing, oꝛ
detaining any such debt, duty, oꝛ
other thing, as is afoꝛesaid, shall
foꝛfeit and lose double as much
as he oꝛ they shall so claim, de-
mand, detain, oꝛ posses, which
said foꝛfeiture shall be levied, re-
covered, and imployed in manner
and foꝛm as is afoꝛe rehearsed.

Pꝛovided also, and be it enact-
ed by Authoꝛity afoꝛesaid, that if it
shall foꝛtune the creditoꝛs of any
such Bankrupt, as is afoꝛesaid, to
be satisfied and paid of their
debts and duties, of, oꝛ with the
pꝛoper lands, tenements, goods,
chattels, and debts of the said
Bankrupts, oꝛ of, oꝛ with the
same, and some part of the foꝛ-
feitures of the said double values

to be forfeited, as is aforesaid, and that there shall remain an overplus of the said forfeitures of the said double values: that then the one moiety of the said overplus of the said forfeitures of the double values so remaining, shall be by the said Commissioners so executing the said Commission, within convenient time after the levying thereof, paid unto the Queens Majesty, her Heirs and Successors, and the other moiety thereof shall be by the said Commissioners employed and distributed to and amongst the poor within the Hospitals in every City, Town or County, where any such Bankrupt shall happen to be: Any thing in this Act to the contrary thereof not withstanding.

And be it further enacted by Authority aforesaid, that if any such person or persons which is or shall be indebted, do of purpose with-

withdraw him or themselves out or from his or their usual mansion house or houses: that then upon complaint thereof made to the said Commissioners having authority, as is aforesaid, the same Commissioners, or the more part of them, shall by vertue and authority of this present Act, have full power and authority to award five Proclamations to be made in the Queens name, upon five sundry Market-dayes, in such places near the place where such Bankrupt hath most commonly dwelled or made his abode, commanding him or them by the same Proclamations in the Queens name to return with all convenient speed, and to yeeld his or their bodies before the said Commissioners, having authority as is aforesaid, or one of them, at such time and place as by the said Proclamation shall be appointed: and if the said person

be not according to such Proclamation repair and yield his or their body as is aforesaid, that then the body of all and every such offender or offenders, shall be adjudged, taken, and deemed to all intents and purposes out of the Queens protection: and that also every person and persons that shall willingly and wittingly help to hide or convey, or shall wittingly and willingly receive, detain, or keep secretly any person or persons so demanded by Proclamation as is aforesaid, shall suffer such pains by imprisonment of his or their bodies, or to pay such fine to our Sovereign Lady the Queens Majesty, her Heirs and Successors, as to the said Lord Chancellor, or Lord Keeper of the great Seal (being informed thereof) by the Commissioners so to be appointed as is aforesaid, or the more part of them shall seem meet and convenient

venient for their said offence or offences.

Provided always, and be it further enacted, that if the Creditors of any such offender or offenders, debtor or debtors, which so do depart the Realm, keep his or their house or houses, or otherwise absent or withdraw him or themselves into places unknown, or take Sanctuary, or will suffer him or themselves to be arrested or outlawed, or yield his or their bodies into prison purposely, and for the causes aforesaid; be not fully satisfied or otherwise contented for their debts and duties by the way and means before specified and declared: that then the said Creditor or Creditors, and every of them shall and may have their remedy for the recovery and levying of the residue of their said debts or duties, whereof they shall not be fully satisfied, payd, or otherwise contented in

form aforesaid, against the said offender or offenders, in like manner and form as they should and might have had before the making of this Act. And that the said creditor or creditors, and every of them, shall be only barred and excluded by vertue of this Act, of, and for every such part and portion of the said debts and duties as shall be paid, satisfied, distributed, or delivered unto him or them by order of the said persons, as is aforesaid, and of no more portion or parcel thereof: Any thing herein specified that may be taken or construed to the contrary notwithstanding.

Provided always, and be it also enacted by authority aforesaid, that if any person or persons, which is or shall be published and declared to be a Bankrupt by vertue of this Act, shall at any time after purchase any lands, tenements, hereditaments, free,

or

or copy, offices, fees, goods or chattels: or that any lands, tenements, hereditaments, free or copy, offices, fees, goods or chattels shall descend, revert, or by any means come to any such person or persons being Bankrupts, as is aforesaid, before such time as their debts due to their creditors shall be fully satisfied and payed, or otherwise agreed for: that then the said lands, tenements, hereditaments, as well free as copy, offices, fees, goods and chattels, shall by vertue of this Act, be by the said Commissioners to be appointed as is aforesaid, or the more part of them, be bargained, sold, extended, delivered and used for and towards the payment of the said creditors, in such like manner and form as other the lands, tenements, hereditaments, free or copy, offices, fees, goods, and chattels of the said Bankrupts,

which

which they had when they were first declared to be Bankrupts, should or might have been bargained, sold, disposed, or used by vertue of this Act.

Provided alwayes, that this Act shall not extend to any lands, tenements, or hereditaments free or copy-hold, which heretofore have been assured by any such Bankrupt, or hereafter shall be assured by any Bankrupt before he become Bankrupt: so always that such assurance be made bona fide, and not to the use of the Bankrupt himself only, or of his heirs: and that the parties to whose use such assurance hath or shall be made, be not at or before the making of such assurance, privy or consenting to the fraudulent purpose of any such Bankrupt, to deceive his Creditors. 1 Jac. 15. 21. Jac. 15.

1 *Jacob. Chap.* 15.

An Exposition and addition to the Statutes of Bankrupts, made 13 *Eliz.* 7.

FOr that fraud and deceits as new diseases, dayly increase amongst such as live by buying and selling, to the hindrance of traffick and mutual commerce, and to the general hurt of the Realm, by such as wickedly and wilfully become Bankrupts: And for that the description of a Bankrupt, in former Statutes is not so fully expressed, nor the power given thereby to the Commissioners for Bankrupts, so large as is meet, in such cases of deceit, to prevent the deceitful actions of Bankrupts.

For remedy whereof, Be it therefore enacted by our Soveraign Lord the King, and by the Lords

Lords Spiritual and Temporal, and the Commons at this present Parliament assembled, and by the authority of the same, That all and every such person and persons, using or that shall use the trade of Merchandize, by way of bargaining, exchange, barrtrie,, chevisance, or otherwise in grois, or by retail, or seeking his, her, or their trade of living by buying and selling, and being a Subject born of this Realm, or any the Kings Dominions, or Denizen, who at any time sithence the first day of this present Parliament, or at any time hereafter shall depart the Realm or begin to keep his or her house or houses, or otherwise to absent him or her self, or take Sanctuary, or suffer him or her self, willingly to be arrested for any debt, or other thing not grown or due for money delivered, wares sold, or any other just or lawful

cause

cause, or good consideration, or purposes, or hath or will suffer him or her self to be outlawed, or yield him or her self to prison, or willingly or fraudulently hath or shall procure him or her self to be arrested, or his or her goods, money or chattels, to be attached or sequestred, or depart from his or her dwelling house, or make or cause to be made any fraudulent grant or conveyance of his, her or their Lands, Tenements, goods or chattels, to the intent or whereby his, her or their Creditors being Subjects born as aforesaid, shall or may be defeated or delayed for the recovery of their just and true debts, or being arrested for debt, shall after his or her arrest, lie in prison six months or more, upon that arrest or upon any other arrest or detention in prison for debt, and lie in prison six months upon such other arrest or detention, shall

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be accompted and adjudged a Bankrupt to all intents and purposes.

And be it further enacted by the authority of this present Parliament, that the like Commissions, Orders, benefits and remedies, which are and be provided and limited by the said former Act of Parliament (made in 13 nuper Eliz. Reginæ) against any Bankrupts therein described for or concerning his, her or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes and debts, or any of them, shall be had, pursued, taken and expounded against such person and persons that are herein expressed to be Bankrupts, his, her, and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandises and debts, in such like manner and form as the same

ought

ought or might have been if the persons herein described to be Bankrupts had been described to be Bankrupts, according to the intent of the said former Statute.

And that it shall be lawful for any of the creditors of the said Bankrupt within iiii months after any such Commission shall be sued forth, and until distribution shall be made by the said Commissioners for the payment of the Bankrupts debts, as in such case hath been used, to partake, and joyn with the other Creditors, that shall sue forth any such commission, for satisfaction and payment of his, her or their debts, to him or them owing, without any hindrance, let or disturbance of any of the same Commissioners, or of any of the other creditors of any such Bankrupts, the same Creditors so coming in to contribute to the charges of

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the said Commission, and that if the said Creditors come not in within six months, then the Commissioners to have power to distribute.

Be it further enacted, that if any person which hereafter is or shall be a Bankrupt, by intent of this Statute, shall convey or procure, or cause to be conveyed to any of his children, or other person or persons, any mannors, lands, tenements, hereditaments, offices, fees, annuities, leases, goods, chattels, or transfer his debts into other mens names, except the same shall be purchased, conveyed, or transferred, for or upon marriage of any of his or her children, both the parties married, being of the years of consent, or some valuable consideration, shall be in the power and authority of the Commissioners in this behalf to be appointed, or the more part of them, to bar.

bargain, sell, grant, convey, demise, or otherwise to dispose thereof, in as ample manner, as if the said Bankrupt had been actually seised or possessed thereof, or the debts were in his own name of the like estate or interest to his or their own use, at such time as he or shee became Bankrupt. And that every such grant, bargain, sale, conveyance, and disposition of the said Commissioners, or of the greater part of them, shall be good and available to all intents, constructions, and purposes in the Law against the offender or offenders, his heirs, executors, administrators, and assigns, and such children and persons as shall be subject to this Statute, and against all other person and persons claiming by, from, or under such offender or offenders, or such said other persons, to whom such conveyance shall be made by the said Bank-

rupt, or by his means or procure-
ment.

And for that the practises of Bankrupts of late are so secret and so subtile, as that they can very hardly be found out, or brought to light: and for that the former statute giving power to the Commissioners to examine others than the Bankrupts, hath not fully or sufficiently authorized them to examine the said Bankrupt upon oath: For remedie whereof, Be it further enacted by the authority of this present Parliament, That the said Commissioners may call before them, or the greater part of them, the said Bankrupt: and if upon lawful warning left or made in writing at three several times at the dwelling place or house where the said Bankrupt, his wife or family, for the most part of his abode, did lodge or remain, within one year

next

next before he, she, or they became Bankrupt, the said Bankrupt shall not appear before the said Commissioners, or the greater part of them, That then and from thenceforth it shall be lawful for the greater number of the said Commissioners, to appoint to proclaim the said party a Bankrupt, at such publick place or places, where the said Commissioners, or the greater part of them shall think meet, warning him, her, or them to appear before them upon the said Commission, at some time appointed. And that if upon the five several Proclamations made in some publick place, the party offending appear not before the said Commissioners, and yield his, her or their bodies to them, or some of them, the said Commissioners, or the greater part of them, shall or may award a Warrant to such fit person or persons, as they

think meet, to apprehend the body and bodies of the said offenders, and offenders, and to bring him, her, or them so offending, before the said Commissioners, wheresoever the said party or parties offending may be found, in place privileged or not, to be examined by the said Commissioners, or the greater part of them.

And that it shall be lawful for the said Commissioners, or the greater part of them, to examine the said offender or offenders, upon such Interrogatories, touching the Lands, tenements, goods, chattels, debts, bills, bonds, books of account, and such other things, as may tend to disclose his, her, or their estate, or the secret grants, conveyances and eloyning of his, or their lands, tenements, goods, money and debts. as they shall think meet.

And

And that if therein the offender or offenders shall refuse to be examined, or to answer fully to every Interrogatory to him to be ministred by the said Commissioners, or the greater part of them, it shall be lawful for the said Commissioners, or the greater part of them to commit the said offender or offenders to some strait or close imprisonment, there to remain untill he, she, or they shall better conform him or her self.

And that if upon his, her or their examination it shall appear, that he, she, or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the creditors of the said Bankrupt, to the value of ten pounds of lawful money of England, or above, the party so offending, shall or may thereof be indicted in any of the Kings Majesties Courts of Record, and

being lawfully convicted thereof, shall stand upon the Pillory in some publick place by the space of two hours, and have one of his ears nailed to the pillory, and cut off.

And whereas by the former Statute made in the said thirteenth year of the reign of the late Queen Elizabeth, the Commissioners for Bankrupts have power given to them to send for such person or persons as the creditors shall know, suppose, or suspect to have, detain, or keep any part of the mony, goods, chattels, or debts of the said offender or offenders, or to be indebted to the said offender or offenders, to be examined by the said Commissioners, as by the same Statute appeareth, but have not good means or remedy by imprisonment or other penalty, to procure the person so sent for by them to appear before them,

them, nor having appeared before them, to make answer upon his oath to such Interrogatories as shall be ministred unto him by the said Commissioners, for and upon the specialty, certainty, true declaration and knowledge of such lands, tenements, hereditaments, goods, debts or other things of any such offender or offenders, as he, or shall be, or which shall be suspected to be in his custody, use or possession, or in the custody, use, or possession of any other to his knowledge and of all debts owing to, or for the benefit of such offender or offenders, by himself or by any other to his knowledge, so as many times a great part of the offender or offenders lands, tenements, hereditaments, goods, chattels, or debts, which by the true intent of the said Statute should be imployed to the satisfaction of the creditors of the offendor or offendors,

fenders, are concealed or detained in the hands of such person and persons as refuse to come, or being come refuse to be sworn before the said Commissioners, to be examined in that behalf, to the great encouragement of all Bankrupts and their wicked confederates and accessaries, and to the great hindrance of the just remedies of the creditors of the said Bankrupts for their true and just debts to them owing: For remedy whereof, be it further enacted by the authority aforesaid, That if any person or persons being known, supposed, or suspected to have or detain any part of the lands, tenements, or hereditaments, goods, chattels or debts of the said Bankrupt, or to be indebted to, or for the benefit of the said Bankrupt, shall after lawful warning to the said person or persons given to come before the said Commissioners,

ners, or the greater part of them, to be examined according to the intent of the said Statute, refuse to come, or shall not come before the said Commissioners at the time appointed, having no lawful impediment (such as shall be admitted and allowed of by the said Commissioners or the more part of them, and which shall be then signified or made known to the said Commissioners, at the time of their assembly;) Or that any such person or persons having knowledge or warning of any other assembly or meeting of the said Commissioners again, shall not come and appear before them at such time as he or she lawfully may come, having no such lawful impediment as shall be then made known to the said Commissioners, and by them admitted and allowed of as aforesaid, Or being come before them shall refuse to

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be sworn and to make answer to such Interrogatories as shall be ministred unto him or them, according to the true intent and meaning of the said Statute made in the said thirteenth year of the reign of our said late Sovereign Lady Queen Elizabeth, or of this present Act, That then it shall be lawful for the said Commissioners, or for the greater part of them, to commit to such Ward and Prison as to them or to the greater part of them shall be thought meet, all such person and persons as shall so refuse to be sworn and make answer to such Interrogatories as shall be so ministred as aforesaid, and also to direct their Warrants to such person or persons as to them or the greater part of them shall be thought meet, to apprehend and arrest such person or persons as shall refuse to appear before them as aforesaid,

and

and to bring him, her, or them before the said Commissioners, or the greater part of them to be examined as above-said, and upon his, her, or their refusal to come or to be examined before the said Commissioners as aforesaid, to commit the said party so refusing, to such prisons as the said Commissioners or the greater part of them shall think meet, there to remain without bail or mainprise, until such time as the said person so refusing to come, or to be sworn to answer before the said Commissioners, shall submit him or her self to the said Commissioners, and be by them examined according to the true intent of the said Statute, and of this present Act.

Provided alwayes, that such Witnesses as shall so be sent for, shall have such costs and charges as the Commissioners

in

in their discretion shall think fit. The same charges to be ratably born by the Creditors of the said Bankrupt, according to the proportion of each of their several debts. And if any person or persons, other than the Bankrupt, either by subornation, unlawful procurement, sinister perswasion, or means of any others, or by his own act, consent, or agreement, shall wilfully and corruptly commit any manner of wilfull perjury by his deposition to be taken before the said Commissioners, or the greater part of them, as aforesaid, That then the party or parties so offending, and all and every person and persons, that shall unlawfully and corruptly procure any such unlawful, wilful, and corrupt perjury, shall, or may therefore be indicted in any of the Kings Majesties Courts of Record, and after his or their con-

conviction thereof, shall incur such forfeiture, and receive and suffer such pains and punishment as are limited by the Statute made concerning Perjury, in the fifth year of the Reign of our said late Sovereign Lady Queen Elizabeth.

And be it further enacted, That all and every sum and sums of money, which shall be forfeited by force of this present Act, shall be sued for, and recovered by the said creditors only, or any of them that will sue for the same, by Action of Debt, Bill, Plaint, or Information, in any of the Kings Majesties Courts of Record; and the sum or sums of money so recovered, the charges of suit being deducted, shall be distributed and divided towards the payment of the said creditors of the Bankrupt.

And for that the power & authority given to the Commissioners

of

of Bankrupts, touching the debts due to the said Bankrupts, is not so full and perfect, as that the full benefit thereof in due course, might be imployed to the use of the said Creditors, as was intended: For remedie thereof, Be it further enacted by the Authority aforesaid, That the Commissioners of Bankrupts, or the greater part of them all have power to grant and assign, or otherwise to order or dispose, all or any of the debts due, to and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the creditors of the said Bankrupt, according to the true intent of the said former recited Statute of Bankrupts: And that the same Grant, Assignment, or disposition of the said debts, in form aforesaid to be made by the said Commissioners, or the greater

part

part of them, shall so vest the property, right and interest of the said debt, and debts, in the person or persons of him, her, or them, to whom it shall be granted, assigned, or ordered by the said Commissioners, or the greater part of them, as fully to all intents and purposes, as if the said Bill, Bond, Bonds, Statutes, Recognizances, Judgment, or Contract, whereupon the said Debt or Debts, Deed or Deeds shall arise or grow, had been made, to or with, or for the said person or persons, to whom the same shall be so granted, assigned, or disposed, by the said Commissioners, and that after such Grant, Assignment, or Disposition made of the said Debts, that neither the Bankrupt, nor any other to whom any such Debt shall be due, shall have power to recover the same, nor to make any release, or discharge

charge thereof, neither shall the same be attached, as the Debt of the Bankrupt, or such said other person or persons, to whom the same shall be due, by any other person or persons, according to the Custome of the City of London, or otherwise. But that the party or parties to whome the same Debts shall be assigned, shall have like remedy to recover the same, as fully and lawfully in the name or names of the person or persons to whom the same shall be so granted, assigned or ordered by the said Commissioners, in all respects and purposes, as the party himself might have had, any Law, Statute, Use, Custome to the contrary thereof in any wise notwithstanding.

Provided always, that no debtor of the Bankrupt be hereby endangered, for the payment of his other debts, truly and bona fide,

fide, to any such Bankrupt, before such time as he shall understand or know that he is become a Bankrupt.

Provided also, and be it further enacted, That such of the said Commissioners as shall put the said Commission in Execution, shall upon lawful request to them made by the said Bankrupt, not only make a true declaration to the said Bankrupts, of the imploying and bestowing of his, her, or their said lands, tenements, and hereditaments, offices, fees, goods, wares, money, chattels, and debts, which shall be paid and satisfied to their said Creditors, as is in like case limited and appointed, by the said former Statute, made in the said thirteenth year of the said late Queens Majesties reign, but also make payment of the overplus of the same, if any such shall be, to the said Bankrupts, their exe-

cutors, administrators, and assigns, and that the said Bankrupts, after the full satisfaction of the said creditors, shall have full power and authority to recover and receive the residue and remainder of the debts to them owing, Any thing in this Act contained to the contrary in any wise notwithstanding.

Be it further enacted, That if any Action of Trespass, or other suit, shall happen hereafter to be brought against any Commissioner authorized by the Statute made in decimo tertio of our late Sovereign Lady Queen Elizabeth, for Bankrupts, or any other person or persons having authority by vertue or under the Commission, authorising the said Commissioner for the doing or executing of any matter, by force of the said Statute, or this present Statute, That the defendant or defendants, in any such

action

action or suit, may plead Not guilty, or otherwise justifie that the Act or thing whereof the plaintiff or plaintiffs complained, was done by Authority of the said Act made in the thirteenth of Elizabeth, or in this present Act respectively, without expressing or rehearsal of any other matter or circumstance contained in either of the said Acts, and without inforcing him or them to set forth their Commission authorizing the said Act or thing, whereunto the Plaintiff shall be admitted to reply, that the Defendant did the Fact, supposed in the Declaration of his own wrong, without any such cause alledged by the said Defendant; whereupon the issue in such action, shall be joyned to be tried by verdict of twelve men, and upon trial of that issue, the whole matter to be given on both parties in evidence, according to the very truth of the

same. And if verdict upon such issue shall pass for the defendant, the defendant to have his costs.

Provided always, and be it further enacted, That after any Commission of Bankrupts hereafter sued forth, and dealt in by the Commissioners, if the offendor happen to die, before the Commissioners shall distribute the Goods, Lands, and Debts of the offendors, or any of them, by force of the aforesaid Statute, of the thirteenth year of the Reign of our late Sovereign Lady Queen Elizabeth, and this Statute, or either of them, That then nevertheless, the said Commissioners shall and may in that case proceed in execution, in, and upon the said Commission, for, and concerning the offenders Goods, Lands, Tenements, Hereditaments, and Debts, in such sort as they might have done, if the party

party Offenders were living. Stat. 21 Jac. 19.

21 *Jac. Chap.* 19.

A further description of a Bankrupt. The Statutes of 13 *Eliz.* 7. and 1, Jac. 15 enlarged.

FOr as much as daily experience sheweth, that the number and multitude of Bankrupts do increase more and more, and also the frauds and deceits invented and practised for the avoiding and deluding the penalties of the good Laws in that behalf already made, and the remedy by them provided: And for that divers defects are daily found in the former Statutes made against Bankrupts, both in the description of a Bankrupt, as also in the power given to the Commissioners for the discovery and distributing the Bankrupts e-

state, to the great incourage-
ment of evil minded persons, the
hindrance of traffique and com-
merce, the great decay, over-
throw and undoing of many Cl
thiers, by whom many thousands
of the natural born Subjects o
this Realm, be from time to time
in all parts of this Kingdom se
on work: all which do tend t
the general hurt of this Realm;
For remedy whereof, be it enac
ed by the Kings most excellen
Majesty, the Lords Spiritua
and Temporal, and Common
in this present Parliament a
sembled, and by the Authority a
the same, That all and singula
the aforesaid Statutes and Law
heretofore made against Bank
rupts, and for relief of Credi
tors, shall be in all things large
ly and beneficially construed an
expounded for the aid, help,
and relief of the Creditors o
such person or persons as already
be

be, or hereafter shall become Bankrupt.

And that all and every person and persons using or that shall use the trade of Merchandize, by way of bargaining, exchange, bartering, chevisance, or otherwise in gross, or by retail, or seeking his, or her living, by buying and selling, or that shall use the trade or profession of a Scrivener, receiving other mens moneys or estates into his trust or custody, who at any time after the end of present Session of Parliament, shall either by himself, or others by his procurement, obtain any protection or protections, other than such person or persons as shall be lawfully protected by the priviledge of Parliament, or shall prefer or exhibit unto his Majesty, his Heirs or Successors, or unto any of the Kings Courts, any Petition or Petitions, Bill or Bills against his or her Credi-

tor or Creditors, or any of them, thereby desiring, or indeavouring to compel or enforce them, or any of them, to accept less than their just and principal debts, or to procure time, or longer days of payment, than was given at the time of their originall contracts, or being indebted to any person or persons in the sum of one hundred pounds or more, shall not pay, or otherwise compound for the same, within six months next after the same shall grow due, and the Debtor be arrested for the same, or within six months after an originall Writ sued out to recover the said debt, and notice thereof given unto him, or left in writing, at his, or their dwelling house, or last place of abode. or being arrested for debt, shall after his or her arrest, lie in prison two months or more, upon that, or any other arrest or detention in prison for debt, or being arrested

for

the sum of one hundred pounds or more, of just debt or debts, shall at any time after such arrest, escape out of prison, or procure his enlargement, by putting in common or hired Bayl, shall be accounted and adjudged a Bankrupt to all intents and purposes: And in the said cases of arrest, or lying in prison for such debt or debts, or getting forth by common or hired Bayl, from the time of his or her said first arrest.

And be it further enacted by the authority of this present Parliament, that the like Commissions, Orders, Benefits, and Remedies, which are and be provided and limited by the said former Acts of Parliaments, made in the thirteenth year of the late Queen Elizabeth, and in the first year of the Reign of our Sovereign Lord the Kings Majesty, against any Bankrupts in them,

or

or either of them described, or for, or concerning his, her, or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandize and Debts, or any of them, shall and may be had, pursued, taken, and expounded against such person and persons as are herein, and hereby, declared, described, or expressed to be Bankrupts and against his, her, and their Lands, Tenements, Hereditaments,, Fees, Annuities, Officers, Goods, Chattels, Wares, Merchandizes and Debts, in such manner and form, as the same ought, and might have been, if the persons herein declared, described, or expressed to be Bankrupts, had been by the said Statutes, or either of them, described to be Bankrupts, to all intents and purposes whatsoever.

And be it enacted by the authority,

rity aforesaid, That the same Orders, benefits and remedies, which are, and be provided and limited by this present Act, against any Bankrupts, in, or by this Act declared, described, or expressed to be Bankrupts, or for, or concerning his, her, or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, or any of them,, or the discovery of them, or any of them, shall from henceforth be had, pursued, taken and expounded against such person and persons, as are declared or expressed to be Bankrupts, by the said former Acts of Parliaments, or either of them, and against his, her, and their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, in such manner and form, as the same ought and might

might have been, if the persons in the said former Statutes, or either of them described to be Bankrupts, had been mentioned and described to be Bankrupts, in, and by this present Act.

And whereas by the former Laws the Commissioners appointed have power to examine the Bankrupt himself, and such person or persons, as are suspected to have, or detain of the estate, goods or chattels of the Bankrupts, but some doubt hath been made whether the Commissioners have power to examine the wives of the Bankrupts touching the same, by reason whereof the Bankrupts wives do daily conceal, and convey away, and cause to be conveyed away much part of their husbands moneys, wares, goods, merchandize and other estate, to person or persons unknown to any, but such wives, by reason whereof much of the

Bank-

Bankrupts estate is concealed, and detained from the Creditors,

For clearing therefore the said doubt, and avoiding the inconveniences aforesaid, Be it declared and enacted by the authority aforesaid, That after such time, as any person shall by the said Commissioners, executing the said Commission, or the greater part of them, be lawfully adjudged or declared to be a Bankrupt, the said Commissioners executing such commission, shall have power and authority to examine upon oath, the wife and wives of all and every such Bankrupt, for the finding out, and discovery of the estate, and estates, goods, & chattels of such Bankrupt, or Bankrupts, concealed, kept or disposed of, by such wife or wives, in their own person or persons, or by their own act or means, or by any other

other perſon or perſons. And that ſhee and they, the ſaid wife and wives, ſhall incur ſuch danger and penalty for not coming before the ſaid Commiſſioners, or for refuſing to be ſworn and examined, or for not diſcloſing the truth upon her or their examination, or examinations; as in, and by the ſaid former Laws, or either of them is already made, and provided againſt any other perſon, or perſons in like caſes.

And be it further enacted by the authority aforeſaid, That if any Bankrupt ſhall upon his, or her examination, or examinations to be taken before the ſaid Commiſſioners, executing the ſaid Commiſſion, be found fraudulently, or deceitfully to have conveyed away his, or her Goods, Chattels, Lands, Tenements, Offices, Fees, Rents or Annuities, or other Eſtate, or any part there-

thereof, to the value of twenty pounds or above, to the end and purpose to hinder the execution of this Statute, or of any other the aforesaid Statutes, or thereby to defraud, delay, or hinder his or her Creditors of the same, and shall not upon his or her examination discover unto the said Commissioners, and (if it lie in his or her power) deliver unto the said Commissioners, all that estate, Goods, and Chattels, so fraudulently, and deceitfully conveyed away, as aforesaid, or by him or her, his or her means, kept or detained from the said Commissioners, or that cannot make it appear unto the said Commissioners that he or she hath sustained some casual loss, whereby he or she is disabled to pay, what he or she then owed, shall or may be indicted for such fraud or abuse, at the Assises or general Sessions, to be holden before

before the Judges of Assise, or Justices of the Peace of the County or place, where he or she shall become Bankrupt: And if upon such Indictment or Indictments, the Bankrupt be thereof convicted, he or shee so convicted, shall be set upon the Pillory in some publick place, for the space of two hours, and have one of his or her ears nailed to the Pillory, and cut off.

And for that some doubt is conceived, whether the Commissioners in case of resistance, have power by the former Laws, to break open, or cause to be broken open, the House or Houses of such Bankrupts, which if they have not, the remedies by the former Laws given, will be to little effect: Be it therefore enacted, That in the execution of the said Commission, it shall be lawful, to, and for the said Commissioners, or the greater part of them,

them, or any other person or persons, Officer or Officers, by them, or the greater part of them, to be deputed and appointed by their Warrant or Warrants, under their hands and seals, to break open the House or Houses, Chambers, Shops, Warehouses, Doors, Trunks or Chests of the said Bankrupt, where the said Bankrupt, or any of his or her Goods or Estate, shall be, or reputed to be, and to seize upon, and order the body, Goods, Chattels, ready Money, and other estate of such Bankrupt, as by the said former Laws are limited and appointed, whether it be by imprisonment of his or her body, or otherwise, as to the said Commissioners or the greater part of them, shall be thought meet.

And for the better division and distribution of the Lands, Tenements, Hereditaments, Goods,

Chattels, and other Estate of such Bankrupts, to, and amongst his or her Creditors, Be it enacted that the Commissioners, or the greatest part of them, shall, and may examine upon oath, or by any other ways or means, as to them shall seem meet, any person or persons for the finding out, and discovery of the truth, and certainty of the several debts due, and owing, to all such Creditor and Creditors, as shall seek relief by such course or Commission to be sued forth, as aforesaid: And that all and every Creditor & Creditors, having security for his, or their several Debts, by Judgment, Statute, Recognizance, Specialty with penalty or without penalty, or other security, or having no security, or having made Attachment in London, or any other place, by vertue of any custome there used, of the Goods and Chattels of any such Bankrupt, whereof

wherof there is no execution or Extent served and executed, upon any the Lands, Tenements, Hereditaments, Goods, Chattels, and other estate of such Bankrupt, before such time, as he or she shall, or do become Bankrupt, shall not be relieved upon any such Judgment, Statute, Recognizance, Specialty, Attachments, or other security, for any or more than a ratable part of their just and due debts, with the other Creditors of the said Bankrupt, without respect to any such penalty, or greater sum contained in any such Judgment, Statute, Recognizance, Specialty with Penalty, Attachment or other Security.

And be it further enacted, that if it shall happen, any the Lands, Tenements, Goods, Chattels, Debts, or other estate of any Bankrupt, to be extended, after such time as he, or she is become a Bankrupt, by any

perſon or perſons, under colour or pretence, of his or their being an Accomptant, or any way indebted unto our Soveraign Lord the Kings Majeſty, his Heirs or Succeſſors, that then it ſhall be lawful to, and for the ſaid Commiſſioners, to examine upon oath, whether the ſaid Debt were due to ſuch Debtor or Accomptant, upon any bargain or contract originally made, betwixt ſuch Accomptant, and the ſaid Bankrupt, the ſaid Debtor or Accomptant, and his, or their ſervants: And if ſuch bargain or contract was originally made, to, and with any other perſon or perſons, than the ſaid Debtor or Accomptant, or for the uſe and truſt of any other perſon or perſons, than it ſhall and may be lawful, to and for the ſaid Commiſſioners, or the greater part of them to order and diſpoſe of all ſuch Lands, tenements, hereditaments, Goods, Chattels,

and

and Debts so extended, as aforesaid, to and for the use of the Creditors, which shall seek relief by the said Commission; And that the order and disposition of the said Commissioners, or the greater part of them, shall be good and available against the said extent, and against all persons claiming, from, by, or under the said extent: And that such person or persons, to whom the said Lands, Tenements, Goods and Chattels so extended, shall be bargained, sold, granted, or assigned by the Commissioners aforesaid, or the greater part of them, shall have good remedy, to have, demand, and recover the same, against such person and persons, who shall detain the same: And for that it often falls out, that many persons before they become Bankrupts, do convey their Goods to other men, upon good consideration, yet still do keep the same, and are reputed

the owners thereof, and dispose the same as their own.

Be it enacted, that if at any time hereafter, any person or persons shall become Bankrupt, and at such time as they shall so become Bankrupt, shall by the consent and permission of the true owner, and proprietary, have in their possession, order, and disposition, any Goods, or Chattels, whereof they shall be reputed owners, and take upon them the sale, alteration, or disposition, as owners, that in every such case, the said Commissioners, or the greater part of them, shall have power to sell and dispose the same, to, and for the benefit of the Creditors, which shall seek relief by the said Commission, as fully as any other part of the estate of the Bankrupt: and for the better payment of debts, and discouraging men to become Bankrupts:

Be it further enacted, that the said

said Commissioners, or the greater number of them, shall have power by vertue of this Act, by deed indented, and enrolled within six months after the making thereof, in some of his Majesties Court of Record at Westminster, to grant, bargain, sell and convey any Mannors, Lands, Tenements, or Hereditaments, whereof any Bankrupt is, or shall be in any ways seized of any estate, in tail, in possession, reversion or remainder, and whereof no reversion, or remainder is, or shall be in the Kings Majesty, his Heirs, or Successors, of the gift or provision of his Majesty, his Progenitors, his Heirs, or Successors, to any person or persons, for the relief and benefit of the Creditors of all such Bankrupts, and that all & every such grants, bargains, sales, and conveyances shall be good and available in the Law, to such person or persons, and their

heirs, against the said Bankrupts, and against all and every the Issues of the body of such Bankrupts, and against all and every person and persons, claiming any estate, right, title, or interest, by, from, or under the said Bankrupts, after such time as such person shall become Bankrupt, and against all and every other person and persons whatsoever, whom the said Bankrupt by common recovery, or other ways or means might cut off, or debar from any remainder, reversion, rent, profit, title or possibility, into, or out of any the said Manors, Lands, Tenements, or Hereditaments.

And be it further enacted, That if any person that now is, or hereafter shall become a Bankrupt, have heretofore granted, conveyed, or assured, or shall at any time hereafter, grant, convey, or assure any Lands, Tenements, Hereditaments, Goods, Chattels, or other estate, unto any person or

persons

persons upon condition, or power of redemption, at a day to come, by payment of mony, or otherwise, That it shall and may be lawful, to, and for the said Commissioners, or the greater part of them, before the time of the performance of such condition, to assign and appoint, under their hands and seals, such person or persons, as they shall think fit, to make tender or payment of mony, or other performance, according to the nature of such condition, as fully as the Bankrupt might have done; and that the said Commissioners, or the greater part of them, shall after such tender, payment, or performance, have power to sell, and dispose of such Lands, Tenements, Hereditaments, Goods and Chattels, and other estates so granted, conveyed, or assured upon condition, to, and for the benefit of the Creditors, as fully as they may sell or dispose of any the estate of the

Bankrupt Provided

Provided further, that no Purchaser, for good and valuable consideration, shall be impeached by vertue of this Act, or any other Act heretofore made against Bankrupts, unless the Commission to prove him, or her a Bankrupt, be sued forth against such Bankrupt within five years after he, or she shall become a Bankrupt.

Provided further, and be it enacted by the Authority aforesaid, that this Act, and all other Acts of Parliament, heretofore made against Bankrupts, shall extend to Strangers born, as well Aliens, as Denizens, as effectually, as to the natural born Subjects, both to make them subject to the Laws as Bankrupts, as also to make them capable of the benefit or contribution, as Creditors by those Laws. *Stat.* 34 H. 8. 4. 13 El. 7. 1 Jac. 15. *Stat.* 14 Car. 2. *Chap.* 24.

Whereas divers Noblemen and

and Gentlemen, not bred up in Trade, have notwithstanding put great Stocks into the East-India and Guiny Company, it is declared that no persons Adventurers for putting in Mony or Merchandise into the said Companies, or for adventuring or managing the Fishing, called the Royal Fishing Trade, shall be taken or reputed a Merchant or Trader within any Statutes for bankrupts or be liable to the same.

Provided that persons trading and trafficking in any other way or manner than the said Companies of Fishing shall be liable to the Commission of Bankrupts.

A Verdict and Judgment against Sir Jo. Wollaston as a Bankrupt, for trading in the East-India Company reversed and made void. Provided, not to avoid any sale or disposition of his lands or goods made by vertue of the Commission of Bankrupts.

To

To the Right Honourable, &c.

IN moſt humble manner complaining, ſheweth unto your Lordſhip your daily Orators, *T. B.* of *A.* in the County of *D.* Gent. and *W. P* of *C.* in the County of *E.* Eſq; as well for themſelves, as for all others the Creditors of *R. D.* of the Pariſh of *M.* in the City of *London* Merchant, That whereas the ſaid *R. D.* uſing and exerciſing the Trade of Merchandize, by way of Bargaining, Exchange, Bartering and Chevisance, ſeeking his Trade of living by buying and ſelling, upon good and juſt cauſes, for Wares and Merchandizes to him ſold and delivered, and alſo for ready mony to him lent, being indebted to your Orators, and others his Creditors in divers and ſeveral ſums of money, amounting in the whole to the ſum

of

of &c. and upwards; of late, that is to ſay, about the Month of *November* laſt did become Bankrupt, within the ſeveral Statutes lately made againſt Bankrupts, to the intent to defraud and hinder your ſaid Orator, and all other his Creditors of their juſt Debts and Duties to them due, and owing (*viz.*) within the Statute made in the Parliament begun and holden at *Weſtminſter* the ſecond day of *April* in the *thirteenth* year of the Reign of our late Sovereign Lady Queen *Elizabeth* concerning Bankrupts: and within the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid, the nineteenth day of *March* in the firſt year of the Reign of our late Sovereign Lord King *James* of *England*, *France*, and *Ireland*, and of *Scotland* the ſeven and thirtieth, Intituled *An Act for the better relief of the Creditors againſt ſuch as ſhall become Bankrupts*; as alſo within the Statute made in the Parliament

begun

begun and holden at *Weſtminſter* the nineteenth day of *February* in the one and twentieth year of the Reign of our ſaid late Sovereign Lord King *James* of *England*, *France*, and *Ireland*, and of *Scotland* the ſeven and fiftieth, Intituled, *An Act for the further deſcription of a Bankrupt, and relief of the Creditors againſt ſuch as ſhall become Bankrupts*, or within ſome or one of them: In tender conſideration whereof, may it pleaſe your Lordſhip to grant unto your Orators his Majeſties moſt gracious Commiſſion to be directed to ſuch and ſo many wiſe, honeſt, and diſcreet perſons as your Lordſhip ſhall ſeem meet, authorizing them thereby, not only concerning the ſaid Bankrupt, his Body, Lands, Tenements, Free-hold and Cuſtomary Goods, Debts, and other things whatſoever, but alſo concerning all other perſons which by concealment claim, or otherwiſe do or ſhall offend touching the premiſes

ſes, or any part thereof, contrary to the true intent and meaning of the ſame Statutes. To do and execute all and every thing and things whatſoever, as well for, and towards ſatisfaction and payment of the ſaid Creditors, as towards and for all other intents and purpoſes, according to the Ordinance and Proviſion of the ſame Statutes:

And your Orators ſhall pray, &c.

CHARLES

In a Bankrupt, Note

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  - 2.
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    - By his demeanour. 12, 13, 14, usque ad Sect. 25.
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- The proceeding against, and punishment of him
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  - 2. In particular by persons
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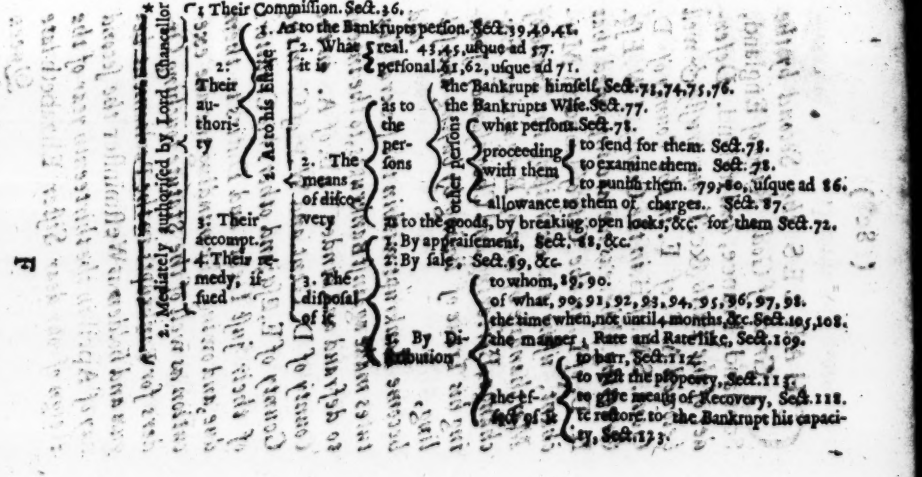
* 5 1 Their Commission. Sect. 36.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of what, 90, 91, 92, 93, 94, 95, 96, 97, 98.
the time when, not until 4 months, &c. Sect. 105, 108.
the manner, Rate and Ratelike, Sect. 109.
the effect of it
to barr, Sect. 112.
to vest the property, Sect. 113.
to give means of Recovery, Sect. 118.
to restore to the Bankrupt his capacity, Sect. 113.

CHARLES *the Second by the Grace of God, King of* England, Scotland, France, *and* Ireland. *Defender of the Faith*, &c. *To our truſty & well beloved* A. B. *of* E. *in the County of* D. *Gent.* S. M. *of* H. *in the County of* W. *Eſq.* Greeting. *Whereas we are informed that* R. D. *of* L. *in the City of* London *Merchant, uſing and exerciſing the Trade of Merchandiſe by way of Bargaining, Exchange, Bartering and Cheviſance, ſeeking his Trade of living by buying and ſelling, did become Bankrupt within the ſeveral Statutes made againſt Bankrupts, to the intent to defraud and hinder* T. B. *of* A. *in the County of* D. *Gent. and* W. P. *of* C. *in the County of* E. *Eſq; and others his Creditors of their juſt Debts and Duties to them due, and owing. We minding the due execution as well of the Statute touching Orders for Bankrupts in the Parliament begun and holden at* Weſtminſter *the ſecond day of* April *in the thirteenth year of the Reign of our dear Siſter* Elizabeth *late Queen*

Queen of England *made and provided: As of the Statute made in the Parliament begun and holden at* Weſtminſter *aforeſaid, the nineteenth day of* March, *in the firſt year of the Reign of our late dear Grandfather King* James *of* England, France, *and* Ireland, *and of* Scotland *the ſeven and thirtieth, Intituled,* An Act for the better relief of Creditors againſt ſuch as ſhall become Bankrupt. *And alſo of the Statute made in the Parliament begun & holden at* Weſtminſter *aforeſaid, the 19th day of* February *in the twenty firſt year of the Reign of our ſaid late dear Grandfather* K. James *of* England, France, *and* Ireland, *and of* Scotland *the ſeven and fiftieth, Intituled,* An Act for the further deſcription of a Bankrupt, and relief of Creditors againſt ſuch as ſhall become Bankrupt, *upon truſt of the wiſdoms, fidelities, diligence, and provident circumſpection which we have conceived in you do by theſe preſents name, aſſign, appoint, conſtitute, and ordain you our ſpecial Commiſſioners, giving full power and authority, un-*

to you, four or three of you, whereof you the said A.B. *to be one according to the same Statutes, and every, or any of them not only concerning the said Bankrupt his body, Lands, Tenements, Free-hold, & Customary Goods, Debts, & other things whatsoever, but also concerning all other persons which by concealment, claim, or otherwise do, or shall offend touching the premises, or any part thereof contrary to the true intent and meaning of the same Statutes, or any of them, to do and execute all and every thing & things whatsoever, as well for and towards satisfaction and payment of the said Creditors, as towards, and for all other intents and purposes according to the Ordinances and provision of the said Statutes, Willing and commanding you, four, or three of you whereof you the said* A.B. *to be one, to proceed to the execution and accomplishment of this our Commission according to the true intent and meaning of the same Statutes, with all diligence and effect, as our special trust is in you. Witness Our self at* Westminster *the*, &c.

What

What a Bankrupt is, and his Deſcription.

1. FIrſt in General, the word *Bankrupt*, is derived of the French word *Banquerouste*, which ſignifieth a breaking, or becoming a Bankrupt: and *Banquerouttier*, ſignifieth a Bankrupt; and *faire Banquerouste*, is as much as *ſolum vertere*, with the Romans: the compoſition of the French word is from *Banque*, which is as much as *Menſa* in Latine, and *route*, which is the ſame with *Veſtigium*, taken for a ſign or mark left in the place from whence a Table had been removed; in the ſame ſence as we in Engliſh ſay a *Cartrouste*, *viz.* the remaining impreſſion of a Cart-wheel. The Original ſeemeth to be taken from the Roman *Menſarii*, who had their *Tabernas* and *Menſas*: (*Tabernæ* being taken for Shops, ſo called *a tabulis, quibus claudebantur*) and theſe were ſeated in pub- His Name.

lick places, from which when they were diſpoſed to ſlip away and delude their Creditors, they left only of theſe Shops ſome *Veſtigia*, or ſigns behind them: *Vide Cowel*, & *Minſhaw verbo Bankrupt.*

His deſcription.

(2.) In the Statute of 34 *H.* 8. *cap.* 4. a Bankrupt is thus deſcribed: *viz. Whereas divers and ſundry perſons, craftily obtaining into their hands great ſubſtance of other mens goods, do ſuddenly flie into parts unknown, or keep their Houſes, not minding to pay, or reſtore unto any of their Creditors their Debts and Duties, but at their own wills and pleaſures, conſume the ſubſtance (obtained by credit) of other men, for their own pleaſures and delicate living, againſt all equity and good Conſcience.*

(3.) Now more particularly, A Bankrupt is ſet forth and deſcribed in the ſeveral Statutes made againſt Bankrupts, Firſt, by his Quality and Occupation: Secondly, by his Demeanour and Carriage.

His Quality.

(4.) For the firſt, as to his Quality and Occupation, he is thus deſcribed by 13 *El. chap.* 7. and 1 *Jac. chap.* 15. *If any Merchant, or other perſon, uſing or exerciſing the trade of Merchandizing, by*

by way of Bargaining, Exchange, Rechange, Bartry, Chevisance, or otherwise in groß, or by retail, or seeking his or their Trade of living by buying and selling, and being a Subject born of this Realm, or of any the Queens Dominions, or Denizen, &c. Which Statute, as appears, extends only to Subjects born, or Denizens: but the Statute of 21 *Jac. cap.* 19. extends likewise to strangers; at the later end of which Statute there is this Proviso, *viz. Provided further and be it enacted, &c. that this Act, and all other Acts of Parliament, heretofore made against Bankrupts, shall extend to Strangers born:* as well aliens, as Denizens, as effectually as to the natural born Subjects, both to make them subject to the Laws as Bankrupts; as also to make them capable of the benefit or contribution, as Creditors by those Laws. Subjects. Strangers.

(5.) A Shoo-maker may be a Bankrupt, because he lives by buying of Leather, and selling of it again in Shoos. *Crook part* 3. *fol.* 31. *Cramp* and *Barn.* An Inn-keeper is not within the Statutes of Bankrupts, for although he buy provision to be spent in his house, and utters it, yet he doth not properly sell it, Shoomaker.

but utters it at such Rates, as he thinks to be reasonable gains; and the Guests do not take it, or contract for it, at a certain price; and if he take excessive prices, he is indictable; and Inn-keepers have many times Hay, Corn, &c. of their own growth, and their gains arise by the attendance of their servants, and furniture of their House and Rooms for the accommodation of his Guests. *Crook 3 part. fol. 549. Crisp verf. Prat.*

(6.) The like I suppose may be said of a Taylor, for his Trade is not by buying and selling, but by making of the Garment, and in what he buyeth, he doth it, but as a servant to his Customers, and ought not to take any more than he lays out.

(7.) Sir *John Wolstenholm*, one of the East-India Company, a person of 3000 *l.* lands a year, yet in regard he had a stock in that company, and received the proceed thereof, he was held to be within the Statutes of Bankrupts, although he did not get the greatest part of his living by buying and selling, notwithstanding the words of the Statute: [*Seeking his or their Trade by buying and selling*,] for the Statute shall be expounded beneficially for the Creditors:

and

and it is not the Quality of a mans Perſon, or the greatneſs of his Eſtate, that exempts him out of the Statute. *Hughs Abridgment, fol.* 315. *Caſe* 7.

(8.) A Feme covert, ſole Merchant in *London* (being ſuch an one as driveth one Trade, and her Husband another:) by the cuſtom of that City may bring an action without her Husband, and be ſued without her Husband, 1 *E.* 4. *pag.* 13. And if her Husband be named with her in an action brought againſt her, it is but for conformity: *contra*, if ſhe exerciſe the ſame Trade with her Husband, although ſhe buy and ſell, *&c.* for it ſhall be intended as ſervant to her Husband: *Crooke* 3 *pag. fol.* 69. alſo a feme covert ſole Merchant, may give away and diſpoſe of her goods without her Husband, 21 *H.* 7. 18. *pag.* 29. A Feme covert ſole Merchant may be a Bankrupt, for if the Cuſtom of *London* doth create in her a diſtinct property from her Husband in the goods ſhe deals in: by the ſame reaſon ſhe alone may become a Bankrupt, within the Statute, and her husband not included, and her husband be alſo a Bankrupt, and ſhe not thereby included. Yet Quere, for the wife is *ſub poteſtate viri*, by the Law of God, and Nature, from which

no

no cuſtom can exempt her; and her huſband when he pleaſe may determine her ſole Merchantſhip; and there it may ſeem reaſonable, that his being a Bankrupt ſhould involve her eſtate, and that her being a Bankrupt ſhould involve his Eſtate, becauſe it is by his permiſſion and privity ſhe drives a diſtinct Trade. *Vide Stones Lecture* 162. who is of opinion that if ſhe abſent her ſelf, &c. and her husband be *non-ſolvent*, both will become Bankrupts, for it was his folly to ſuffer her to be ſole Merchant.

(9.) A Merchant gives over his trading; and ſeven years after becomes *non-ſolvent*, for money he took up while he was a Merchant, he ſhall be a Bankrupt: *Stones Lecture, fol.* 7. *contra*, for Debts contracted ſince he gave over Trading; ſo for Debts due before he gave over trading, and continued upon new ſecurity taken ſince he gave over his trading. *ibid.*

(10.) A Graſier that hireth ground and buyeth Cattel and feedeth them, and then ſells them again, may be a Bankrupt, and is within the Statutes of Bankrupts, ſaith *Stone*: *contra*, if he graſe his own Free-hold: *Stones Lecture* 165. Yet Quere, of the laſt point, for if he

graſe

graſe them in his own Free-hold, yet notwithſtanding he ſeeketh his Trade of living by buying and ſelling, though not wholly by buying and ſelling. *Vide Sect.* 7.

(11.) A Clothier that ſets poor people on work, but himſelf doth only buy the wool, and ſell the Cloth, may be a Bankrupt; *contra*, if he work himſelf, and keepeth Looms and ſervants: ſaith Mr. *Stone* in his *Lecture*, *fol.* 165. but Quere of the laſt point; why he may not (although he work himſelf) be within the Statutes of Bankrupts, as well as a Shoo-maker who buyeth Leather and makes it up into Shoos, and ſells them: for a Clothier buyeth Wool, and makes it up into Cloth, and ſells it. *Vid. Sect.* 5. A Scrivener may be a Bankrupt, by 21 *Jac. chap.* 19.

(12.) Thirdly, a Bankrupt is ſet forth and deſcribed by his Demeanour, or Carriage; which is, 1. his withdrawing himſelf: as it is in 34 *H.* 8. *cap.* 4. *Whereas divers and ſundry perſons craftily obtaining into their hands great ſubſtance of other mens, do ſuddenly fly into parts unknown, or keep their houſes*: and by 13 *El. cap.* 7. he is ſaid to be ſuch an one as ſhall depart the Realm, or begin to

His demeanour.

to keep his or their House, or Houses, or otherwise, *&c.*

(13.) A Merchant or Trader, absents himself for fear of being arrested by a Writ *de excommunicato capiendo*, so if a Decree in Chancery be made against him to make a Conveyance, and he withdraws himself for fear of being attached for not performing of the Decree: It seems in neither of these cases doth his withdrawing make him a Bankrupt; *contra*, if the substance of the Decree had been for payment of Money, because in such case his withdrawing had been for Pay, to defraud, or delay the payment of his Debt: *Stones Lecture*, *fol.* 10. If he depart the Realm, and long time after his departure becomes *non-solvent*, his absenting himself in such case brings him within the Statutes of Bankrupts, *ibid.* 133.

(14.) Secondly, Keeping of their Houses; withdrawing themselves, and keeping their houses, as it is in 13 *Eliz. cap.* 7. and 1 *Jac. cap.* 15. If a Trader upon notice of Process issued forth against him, keeps his house to secure himself from the arrest; and after goeth forth again; and then upon like notice keeps his house, and then again goeth forth:

forth: this bringeth him not within the Statutes of Bankrupts; becauſe he uſes to go at large, and his Policy will not always prevent the ſerving of Proceſs on him, for he may be met withal unwittingly one time or other. *Crook, part* 3. *fol.* 13. *pag.* 6. If one that hath no houſe, ſojourns ſometimes at one place, and ſometimes at another; yet if he appears not abroad as formerly, nor can be found as formerly, this is an abſenting himſelf (as is conceived) within the Statute of 13 *El. chap.* 7. where the words are, *or otherwiſe abſents himſelf:* the ſame words are in 1 *Jac. cap.* 15.

(15.) Thirdly, taking of Sanctuary, as it is in 13 *El. cap.* 7. and 1 *Jac. cap.* 5. There be no Sanctuaries now in *England*; therefore all priviledged places where the Kings Officers cannot come, are within theſe Statutes, as *Stone* conceives in his *Lecture fol.* 171.

(16.) Fourthly, Such as ſhall ſuffer themſelves willingly to be arreſted: the words of the Statute of 13 *El. cap.* 7. are, *Or ſuffer him or her ſelf willingly to be arreſted for any Debt, or other thing not grown, or due for moneys delivered, wares ſold, or any other juſt or lawful cauſe*: and by 1 *Jac. chap.* 15. It is, *Or ſhall*

shall willingly suffer him, or her self [illegible] *be arrested for any Debt, &c. ut supra* and then adds, *or shall willingly, or fraudulently procure himself or her self to be arrested, or his or her goods, money, or chattels to be attached or sequestred* &c.

(17.) A Merchant, *&c.* hath an impropriat Rectory, the Quire is not repaired, the Tithes are sequestred, it is no sequestration within the said Statute, for this is not his immediate procuring, although his default in not repairing the Church, might be a mean to procure it. *Stones Lecture* 172.

(18.) Fifthly, by suffering himself or her self to be outlawed, *&c.* 13 El. *cap.* 7. 1 *Jac. cap.* 15. Quere, if the party reverse the outlawry before the Commission of Bankrupt sued forth; whether his being out-lawed, be within the Statute; and I conceive (with submission) it is not within the Statute; for I suppose the reason of this Clause may be, because the party by the out-lawry intitleth the King to his goods, *&c.* so that his end in so doing may be conjectured to deceive his Creditors, which cannot be intended when he after reverseth it: By *Stone* one out-lawed in *Ireland*

it,

it is not thereby a Bankrupt here, becauſe the Record is not pleadable here. *fol.* 172.

(19.) Sixthly, Yielding himſelf or her ſelf to priſon. 13 *El. cap.* 7. 1 *Jac. cap.* 15. This I conceive is to be intended a voluntary yielding, and not when a man is impriſoned for non-payment of a Fine, *&c.* or any refractory carriage; for although the Act which cauſeth the impriſonment be voluntary, yet the impriſonment it ſelf is involuntary; but Quere, whether it be not a detention for Debt, within the following clauſe, mentioned hereafter in the next Section: for. I ſuppoſe the Fine, after it is once impoſed, becomes a Debt; but yet it may not be within the meaning of the Acts, which were made for the relief of Creditors, only who had intruſted the party offending, and not for a Fine judicially impoſed for ſome contempt.

(20.) Seventhly, Or being arreſted for Debt, ſhall after his or her arreſt lie in priſon ſix months or more upon that arreſt, or upon any other arreſt, or detention in priſon for Debt; and lie in priſon ſix months upon ſuch arreſt or detention, *&c.* 1 *Jac. cap.* 15. and in 21 *Jac. cap.* 19. It is thus; *Or being arreſted*

for

for Debt, shall after his or her arrest [illegible] in prison two months or more, upon the or any other arrest, or detention in prison for Debt. 21 *Jac. cap.* 19. Suppose he be arrested upon a Bond before the day of payment; for by the custom of London a Creditor may arrest a Debtor there before the day of payment to find sureties, *Cook, lib.* 8. 126. a. *City of London case:* and lie in prison two months &c. I conceive this case to be within the Statutes, for the Debt ariseth upon the obligation, and is a Debt presently upon sealing and delivery of the Deed; and I conceive the action for which he is arrested must be an action of Debt: although the end of that arrest is not to inforce the payment of the Debt, but to find sureties in case the Creditor fear the Debtor to be too weak for his ingagement; and in case the Debtor upon such arrest finds not sureties, his body is to continue in prison, as a pledge for the Debt; like Law I conceive in case of a single Bill, or a Debt arising upon a contract; for it is a Debt presently and before the day of payment. *Vide Crook, part* 2. *fol.* 300. *Tynam verſ. Bridges.*

(21.) Eightly, Or being indebted to any person or persons in the sum of 100. *lib.*

100. *lib.* or more, ſhall not pay, or otherwiſe compound for the ſame within ſix months next after the ſame ſhall grow due, and the Debtor be arreſted for the ſame, or within ſix months after an original Writ ſued out to record the ſaid Debt, and notice thereof given unto him, or left in writing at his or their dwelling houſe, or laſt place of abode: 21 *Jac. cap.* 19.

(22.) Ninthly, Or being arreſted for the ſum of 100 *lib.* or more of juſt debt or debts, ſhall at any time after ſuch arreſt eſcape out of priſon, or procure his enlargement by common or hired bail. And in the ſaid caſes of arreſt, † or lying in priſon for ſuch Debt or Debts, or getting forth by common or hired bail, he ſhall be judged a Bankrupt from the time of his firſt arreſt. 21 *Jac. cap.* 19.

† Mentioned in 21 *Jac. cap.* 19.

(23.) Tenthly, or ſhall either by himſelf, or others by his procurement, obtain any protection or protections, other than ſuch perſon or perſons ſhall be lawfully protected by the priviledg of Parliament, 21 *Jac. chap.* 19.

(24.) Eleventhly, or ſhall preſer or exhibit unto his Majeſty, his heirs or Succeſſors, or unto any of the Kings

Courts any Petition or Petitions, Bill or Bills against his or her Creditor or Creditors, or any of them, thereby desiring or endeavouring to compel or inforce them, or any of them, to accept of less than their principal and just Debts, or to procure time, or longer days of payment than was given at the time of their original contracts, 21 *Jac. cap.* 19.

(25.) Twelfthly, or shall make or cause to be made any fraudulent grant or conveyance of his, her, or their Lands, Tenements, Goods or Chattels, to the intent, or whereby his, her, or their Creditors being subjects born, * shall or may be defeated or delayed for the recovery of their just and true debts; as it is in 1 *Jac. cap.* 15.

* Vid. sect. 4 Where it appears that strangers are also included.

(26.) In all which cases before recited, the Person offending is declared to be a Bankrupt, within the said Statutes. And the end or final cause of all such his demeanor, is expres'd by 13 *El. cap.* 7. to be to defraud the Creditors of their just Debts, *&c.* and by 1 *Jac. cap.* 15. it is thus, To the intent that his, her, or their Creditors, being subjects born, shall or may be defeated or delayed from the recovery of their just and true Debts: *ibid.* And by 21 *Jac. cap.* 19. All the said

said Statutes shall extend as well to Aliens and Denizens, as to Subjects born.

The punishment, and proceedings against Bankrupts, by 34 H. 8. Cap. 4.

(27.) *Nota*, By 21 *Jac. cap.* 19. it is enacted, that all Statutes and Laws formerly made against Bankrupts, and for relief of Creditors, shall be in all things largely and beneficially construed for relief of the Creditors.

(28.) First, in General, He shall be accompted a Bankrupt to all intents and purposes; 13 *Eliz. cap.* 7. 21 *Jac. cap.* 19. 1 *Jac. cap.* 15. and being a Bankrupt, he is presently disabled, as to the disposal of any part of his Estate, although it be to some of his Creditors; for he is utterly discredited by his becoming a Bankrupt, & the Law will not trust him with the distribution of his Goods, *vide Coke, lib.* 2. 16. *a.* Case of Bankrupts. In General.

(29.) Secondly, more particularly, the Bankrupts are to be proceeded against by Persons immediately authorized by Act of Parliament, or mediately: the persons immediately authorized are set forth by 34 *H.* 8. *cap.* 4. to be the Lord Chancellor or Lord Keeper for In particular. Touching the Bankrupts Person.

the time being, Lord President, Lord Privy-Seal, another of the Kings moſt Honourable Privy-Counſel, and the Chief Juſtice of either Bench for the time being, or three of them at the leaſt; whereof the Lord Chancellor or Keeper of the Great Seal, Lord Treaſurer, Lord Preſident, or the Lord Privy-Seal to be one; who upon every complaint made to them in writing by any parties grieved, ſhall have power and authority by vertue of the ſaid Act, to take by their wiſdom and diſcretion, ſuch orders and directions, as well with the bodies of the ſaid offendors, whereſoever they may be had, as well in their houſes as elſewhere, by impriſonment of their Bodies, or otherwiſe; as alſo with their Lands, Tenements, *&c.* which they have in Fee-ſimple, Fee-tail, for term of life, term of years, or in the right of their wives; as much as the intereſt, Right and Title of the ſame offenders ſhall extend to, or be, and may then lawfully be departed with by the ſaid offendors; and alſo with their moneys, goods, chattels, wares, merchandiſes and debts, whereſoever they may be found or known, *&c.* 34 *H.* 8. *cap.* 4.

30. So

(39.) So that the power given by the ſaid Statute, relates either to the perſon or eſtate of the Bankrupt: Firſt, as to *his* perſon, *viz.* If the offender doth withdraw out of the Kings Dominions, to defraud his Creditors; upon complaint thereof made in writing to the ſaid Lords, having authority as aforeſaid, they ſhall by vertue of the ſaid Act, have power to award Proclamations to be made in ſuch places as to them ſhall be thought meet and convenient; commanding by the ſame ſuch offendor, in the Kings name, to return with all convenient ſpeed, into this Realm, and to yield his body before the ſaid Lords, or one of them: And if the ſaid perſon, within three months after he ſhall have notice of ſuch Proclamation; or, ſo ſoon after as he conveniently may, do not repair and yield his body as aforeſaid; That then the body of all and every ſuch offender and offenders, ſhall be adjudged, taken, and deemed, to all intents and purpoſes, out of the Kings protection; and his Goods, Chattels, Lands, Tenements, and Debts, ſhall be by the order and diſcretion of the ſaid Lords, employed and diſtributed amongſt the offenders Creditors equally, &c. 34 *H.* 8. *cap* 4. G 3 31. Se-

Touching the Bankrupts eſtate.

(31.) Secondly, Touching the offendors eſtate obſerve (more particularly) firſt the power given to the Lords by 34 H. 8. for the diſcovering and obtaining of it: Secondly, for their diſpoſal and ordering of it.

The diſcovery of it.

(32.) Firſt, for the diſcovery and obtaining of it, The effect of that Statute is, That if, after any ſuch Act or offence committed, and complaint thereof made to the Lords as aforeſaid, by any party grieved concerning the premiſes, who knowing, or ſuſpecting any of the goods, chattels, wares, merchandizes, or debts of ſuch offendors, to be in the cuſtody, uſe, or poſſeſſion, of any perſon or perſons; or any perſon or perſons to be indebted to any ſuch offendor or offendors, do make relation thereof to the ſaid Lords, then they are impowred by the ſaid Statute, to ſend for, and convent before them, ſuch perſon or perſons ſo known or ſuppoſed to have any ſuch goods, wares, &c. in their cuſtody, or to be indebted to the offendor or offendors; and upon their appearance, to examine them, and every of them, as well by their Oaths, as otherwiſe, for and upon the ſpecialty, certainty, true declaration, and knowledg, of all and ſingu-

lar

lar ſuch goods, wares, debts, *&c.* as be ſuſpected to be in his, or their cuſtody, uſe, *&c.* And if the perſon ſo examined, do not plainly diſcloſe the whole truth, of ſuch things whereof he ſhall be examined touching the premiſes; then every ſuch perſon or perſons ſo examined, and not declaring the plain and whole truth, upon ſuch proof thereof made, before the ſaid Lords, as they ſhall judge ſufficient in that behalf, ſhall loſe and forfeit double the value of all ſuch goods, wares, *&c.* ſo concealed, to be levied by the ſaid Lords, by ſuch ways and means as they ſhall think fit, the ſame to be diſtributed to the Creditors, in ſuch manner as the Bankrupts Eſtate. 34 *H.* 8. *cap.* 4.

(33.) And that if any perſon or perſons do fraudulently by covin or colluſion demand any debt, or other thing by writing or otherwiſe, of ſuch offendor or offendors, other than ſuch as he, or they can and do prove to be juſtly due before the ſaid Lords, that then every ſuch perſon or perſons, ſo craftily demanding any ſuch debt, *&c.* ſhall forfeit the double of what he ſhall ſo claim, *&c.* to be levied and imployed as aforeſaid.

(34.) So, if the Bankrupt (after he ſhall do thoſe acts, whereby he is declared Bankrupt) ſhall ſuffer fraudulent recoveries againſt him of any debts, goods, *&c.* upon complaint thereof to them made, the Lords are impowred to convent before them the Recoverers; and after ſuch fraud diſcovered the ſaid goods, *&c.* ſo recovered ſhall be chargeable to the Bankrupts debts, and be diſpoſed of to the Creditors (notwithſtanding ſuch Recovery.) 34 *Hen.* 8. *cap.* 4.

Diſpoſal of the Bankrupts eſtate.

(35.) Secondly, Obſerve the power given by that Statute to the Lords, for diſpoſing and ordering of the Bankrupts Eſtate. Firſt, they have power to cauſe the Bankrupts Lands, Tenements, Fees, Offices, Annuities, Goods, and Chattels, Debts, *&c.* to be viewed, rented, and appraiſed. Secondly, To make a ſale of the ſaid Lands, *&c.* or otherwiſe to order the ſame, for the true ſatisfaction, and payment of the ſaid Creditors, rate and rate like, according to the quantity of their debts. Thirdly, And that every direction, order, bargain, ſale, and other things done by the ſaid Lords as aforeſaid in writing, ſigned with their hands, ſhall be good and effectual

fectual in the Law, to all intents, &c. againſt the offenders, their heirs and executors for ever, as if done and executed by the offendors themſelves. 34 *Hen.* 8. *chap.* 4.

Which Statute of 34 *H.* 8. *although it be now out of uſe; yet in regard I do not find it actually repealed, I ſuppoſe it will not be thought altogether ſuperfluous to be taken notice of.*

The proceedings againſt and puniſhment of the Bankrupt, by perſons mediately authoriſed by Parliament.

(36.) The next things conſiderable, are the proceedings againſt, and puniſhment of the Bankrupt, by Commiſſioners or perſons mediately authorized by Parliament, wherein take notice, First, of their Commiſſion: and therein obſerve, firſt from whom obtained, the Lord Chancellor of *England*, or Lord Keeper of the Great Seal, for the time being, upon every complaint made unto him in writing, againſt any ſuch perſon or perſons being Bankrupt, ſhall have full power and authority by Commiſſion under the Great Seal, to name and appoint ſuch

Commiſſioners. Their Commiſſion.

ſuch honeſt and diſcreet perſons, as to him ſhall ſeem meet, &c. 13 *Eliz. cap.* 7 Secondly, by whom to be obtained, by the Creditors. Thirdly, when to be obtained, it muſt be within five years after that the party ſhall become a Bankrupt, or elſe it is not to prejudice purchaſers. 21 *Jac. chap*, 19. the words of the Statute are, *Provided that no purchaſer for good and valuable conſideration, ſhall be impeached by vertue of this Act, or any other Act againſt Bankrupts, unleſs the Commiſſion, to prove him or her a Bankrupt, be ſued forth againſt ſuch Bankrupts, within five years after he or ſhe ſhall become a Bankrupt.* ibid. Family, The duration of the Commiſſion, it is not determined by the Bankrupts death; for by 1 *Jac. cap.* 15. it is thus enacted, *Provided always, and be it enacted, that if after any Commiſſion of Bankrupts hereafter ſued forth, and dealt in by the Commiſſioners, the offendor happen to die, before the Commiſſioners ſhall diſtribute the Goods, Lands, and Debts of the offendors, or any of them,* by force of the aforeſaid Statute of 13 *Eliz.* and this Statute, or either of them, *That then nevertheleſs the ſaid Commiſſioners ſhall and may in that caſe proceed to execution*

in,

in, and upon the ſaid Commiſſion, for, and concerning the offendors goods, lands, tenements, hereditaments and debts; in ſuch ſort, as they might have done if the party offendor were living. 1 Jac. 15.

(37.) If ſuch, or ſuch number of the Commiſſioners die, ſo that the reſt cannot proceed; and thereupon a new Commiſſion be granted to other Commiſſioners, they may call the ſurviving Commiſſioner or Commiſſioners before them, to give accompt for ſuch part of the Bankrupts eſtate, whereof the old Commiſſioners made no diſtribution, as perſons who have the Eſtate of the Bankrupts in their hands: *Stones Lecture, fol.* 19. and 187.

(38.) Secondly, Note the authority given the Commiſſioners, ſo commiſſionated as aforeſaid, by ſeveral Acts of Parliament: Firſt, as touching the Bankrupt himſelf. Secondly, as touching his Eſtate.

(39.) Firſt, as to the Bankrupt himſelf, by the Statute of 13 *El. chap.* 7. it is thus ſet forth: *And be it enacted, that if any ſuch perſon or perſons, which is, or ſhall be indebted, do of purpoſe withdraw him or themſelves out of, or from his or their uſual manſion houſe or houſes, that then*

To cauſe the Bankrupt to appear.

then upon complaint thereof made to the said Commissioners, the same Commissioners, or the more part of them, shall by vertue and authority of this present Act have full power and authority to award five Proclamations, to be made in the Queens Name, upon five sundry Market-days, in such places, near the place where such Bankrupt hath most commonly dwelled, or made his abode; commanding him or them by the said Proclamations in the Queens name, to return with all convenient speed, and to yield his, or their Body before the said Commissioners, or one of them, at such time and place, as by the said Proclamation shall be appointed: and if the said Person or persons do not according to such Proclamation, repair and yield his or their body as aforesaid, that then the body of all and every such offendor or offendors shall be judged, taken, and deemed to all intents and purposes out of the Queens Protection; And that every person and persons, that shall willingly or wittingly, receive, detain, or keep secretly any person or persons so demanded by Proclamation, as is aforesaid, shall suffer such pain of imprisonment of his, or their bodies, or pay such Fine to our Soveraign Lady the Queens Ma-

Proclamations.

Majeſty, her heirs, and Succeſſors, as the ſaid Lord Chancellor, or Lord Keeper of the Great Seal, being informed thereof by the Commiſſioners ſo to be appointed, as is aforeſaid, or the more part of them ſhall ſeem meet and convenient, for their ſaid offence or offences. 13 Eliz. chap. 7.

(40.) And by the Statute of 1 *Jac. chap.* 15. The ſaid Commiſſioners may call before them, or the greater part of them, the ſaid Bankrupt; and if upon lawful warning left in writing, at three ſeveral times, at the dwelling place or houſe where the ſaid Bankrupt, his wife, or family for the moſt part of his abode did lodge, or remain, within one year next before, he, ſhe, or they became Bankrupt; the ſaid Bankrupt ſhall not appear before the ſaid Commiſſioners, or the greater part of them, that then and from thenceforth it ſhall be lawful for the greater number of the ſaid Commiſſioners, to appoint to proclaim the ſaid party a Bankrupt, at ſuch publick place, or places where the ſaid Commiſſioners, or the greater part of them, ſhall think meet, warning him, her, or them, to appear before them, upon the ſaid Commiſſion at ſome time appointed; And

Warning left in writing.

Proclamation.

And that if upon five ſeveral Proclamations made in ſome publick place, the party offending, appear not before the ſaid Commiſſioners, and yield his, her or their bodies to them, or ſome of them the ſaid Commiſſioners or greater part of them, ſhall or may award a warrant to ſuch fit perſon or perſons as they ſhall think meet to apprehend the body and bodies of the ſaid offendor and offendors; and to bring him, her, or them offending before the ſaid Commiſſioners whereſoever the ſaid party or parties offending may be found in places privi-ledged, or not, to be examined by the ſaid Commiſſioners, or the greater part of them, 1 *Jac. chap.* 15.

Breaking open houſes, *&c.* to take the Bankrupts.

(41.) And by 21 *Jac. chap.* 19. The ſaid Commiſſioners, or the greater part of them, in execution of the ſaid Commiſſion, or any other perſon or perſons by them to be deputed by their warrant or warrants under their hands or ſeals have power to break open the houſe or houſes, Chambers, Shops, *&c.* of the ſaid Bankrupt, where the ſaid Bankrupt, his goods, *&c.* ſhall be; and to ſeize upon and order the perſon, *&c.* of ſuch Bankrupt, as by former Laws are appointed *&c.* 21 *Jac.* 19. *And by* 13 *Eliz. ch.*

7. The

7. The ſaid Commiſſioners have power given them, to take order by their diſcretion with the body of the Bankrupt, whereſoever he or ſhe may be had, either in his or her houſes, Sanctuary, or elſewhere, *&c. Ibid.*

(42.) Secondly, Obſerve the power of the Commiſſioners, as to the eſtate of the Bankrupt; and therein take notice, Firſt, of what eſtate. Secondly, the means for the diſcovery, and obtaining of it. Thirdly, their diſpoſal of it.

Of what Eſtate of the Bankrupts the Commiſſioners may diſpoſe.

(43.) Firſt, Of the Bankrupts real Eſtate: Lands, tenements, and hereditaments, as well Copy-hold, or Cuſtomary-hold, as free-hold, which he or ſhe ſhall have in his or her own right, before he or ſhe became Bankrupt, *&c.* 13 *El. chap.* 7. Real Eſtate.

(44.) It is made by Mr. *Stone* a Quere in his Lecture: That if there be two joyntly, and the one become Bankrupt, and dies, whether his part ſhall be ſold, becauſe the ſurvivor is not in by him. But it ſeems to me, that the Bankrupts part ſhall be ſold, and that there

ſhall

ſhall be no ſurvivor in this caſe. Firſt, becauſe the Bankrupts moiety is bound by the Statutes, by his becoming a Bankrupt. Secondly, the Bankrupt had power to ſell the ſame in his life time, and might depart with it, and ſo within the words of 13 *Eliz. cap.* 7. the words are [*ſuch uſe, intereſt, right or title, as ſuch offendor or offendors that ſhall have in the ſame, which he or ſhe may lawfully depart withal.*] *vide* after *Sect.* 46. Thirdly, by 1 *Jac. chap.* 15. The Commiſſioners after the Bankrupts death, may proceed in execution, in and upon the Commiſſion, for and concerning the offendors Lands, Tenements, *&c.* in ſuch ſort as if the offendor had been living; which they cannot do in the caſe before, if the ſurvivorſhip take place.

Copy-hold. (45.) It was agreed by the Juſtices that Copy-holds are within the intent and purliew of all the Statutes concerning Bankrupts, and may be ſold by the Commiſſioners; ſome doubt whereof was made, becauſe they are named in one clauſe of 13 *El.* and not in 1 *Jac. chap.* 15. or 21 *Jac. chap.* 19. for the ſame being in the firſt Statute, and the other Statutes being made in further confirmation and approbation thereof, they ought

ought to be expounded liberally and ſhall be conſtrued accordingly, to make as ſtrong proviſion, as they may againſt the Bankrupt, *Crook*, 3. *part* 550. *Criſp againſt Prat.*

(46.) And all ſuch Lands, tenements, hereditaments, as ſuch perſon, [*viz.* the Bankrupt] ſhall have purchaſed, or obtained for money or other recompence joyntly with his wife, children, or child, to the only uſe of ſuch offendor or offendors, or ſuch uſe, intereſt, right, or title, as ſuch offendor, or offendors then ſhall have in the ſame, which he or ſhe may lawfully depart withal, 13 *El. cap.* 7. 2. Lands purchaſed joyntly with the wife.

(47.) A man purchaſeth Lands to him, and his wife, and his ſon, and two years after he becomes a Trader, and four years after he becomes a Bankrupt, theſe Lands ſhall not be ſold by the Commiſſioners of Bankrupt, and are out of the meaning of the Statute, for elſe none might know with whom to deal by way of marriage or otherwiſe, when a perſon who is not a Tradeſman, ſettles Lands upon his wife and children, *bona fide*, and after becoming a Tradeſman, and then a Bankrupt, the ſaid Acts of Parliament ſhall overthrow a Conveyance

so duly setled. *Crook*, 3 *part. fol.* 550. *Crisp versus Prat.*

3. Lands in truft.

(48.) Lands, Tenements, *&c.* which any person or persons hath in truft to any secret use of any such offendor or offendors, *&c.* 13 *Eliz. chap.* 7. Lord and Tenant are; the Tenant makes a Feoffment to deceive the Lord of the Wardship, and then becomes a Bankrupt, these Lands shall be sold by the Commissioners, for although the conveyance was only fraudulent as against the Lord, yet there was a truft between the Feoffor and Feoffee, *Stones Lecture*, *fol.* 185.

4.

(49.) Manors, Lands, Tenements *&c.* conveyed or procured, or caused to be conveyed by the Bankrupt to any of his children, or other person or persons, except the same shall be purchased or conveyed for, or upon marriage of any of his or her children, both the parties married being of the years of consent, or some valuable consideration. 1 *Jac.* 15.

(50.) A Tradesman in consideration of marriage, makes a conveyance of Lands, to the use of himself and his wife, and held to be within the Statute of 1 *Jac. vide Stiles reports*, *fol.* 288. *Tucker verf. Coff.*

51. Alfo

(51.) Alſo the ſaid Commiſſioners have power to ſell Lands and Tenements conveyed, upon condition; by 21 *Jac. cap.* 19. where it is thus, *If any perſon that now is, or hereafter ſhall become a Bankrupt, have heretofore granted, conveyed, or aſſured, or ſhall at any time hereafter grant, convey, or aſſure any Lands, Tenements, Hereditaments, goods, Chattels, or other Eſtate, unto any perſon or perſons, upon condition or power of redemption at a day to come, by payment of money or otherwiſe, that it ſhall and may be lawful to and for the ſaid Commiſſioners, or the greater part of them, before the time of the performance of ſuch condition, to aſſign and appoint under their hands and ſeals, ſuch perſon or perſons as they ſhall think fit to make tender or payment of money, or other performance, according to the nature of ſuch condition, as fully as the Bankrupt might have done; And that the ſaid Commiſſioners, or the greater part of them, ſhall after ſuch tender, payment, or performance, have full power to ſell, and diſpoſe of ſuch Lands, &c. ſo conveyed upon condition, for the benefit of the Creditors, as fully as they may ſell or diſpoſe of any the eſtate of the Bankrupt.* 21 Jac. Chap. 19. 5. Lands conveyed upon condition.

(52.) *Quere*, Whether the Commissioners may not by the equity of this Stat. appoint one to enter, for a condition broken; As if a trader makes a Feoffment, upon condition to be performed on the part of the Feoffee; the Feoffee breaks the Condition, and before entry, the Feoffor becomes a Bankrupt: It should seem, the Commissioners may take advantage hereof; for the Statutes shall be liberally expounded for relief of the Creditors: if not, yet it seems to be comprehended within the words of 13 *El. cap.* 7. whereby power is given to the Commissioners, to take order and direction with the Bankrupts Lands, *&c.* for such use, interest, right or title, as such offendor or offendors shall have in the same, which word (Title) includes, as I conceive, an entry for a condition broken: yet *Stone* makes a *quære* of it in his Lecture, *fo.* 12.

Lands intailed.

(53.) Lands, Tenements, *&c.* intailed: The Commissioners, or the greater number of them, shall have power by deed indented and inrolled within six months, *&c.* to grant, bargain, sell and convey any Manors, Lands, Tenements or Hereditaments, whereof the Bankrupt is, or shall be in any wise seized

ſeized in Tail, in poſſeſſion, reverſion or remainder (and whereof no reverſion or remainder is or ſhall be in the Kings Majeſty, his Heirs or Succeſſors, of the gift or proviſion of his Majeſty, his Progenitors, Heirs or Succeſſors:) to any perſon or perſons, for the relief and benefit of the Creditors, of all ſuch Bankrupts: And that all and every ſuch grants, *&c.* ſhall be good and available in Law againſt the Bankrupt, his Iſſue, and all claiming by, from, or under him, ſince the time that he became Bankrupt: and alſo againſt all other perſons, whom the Bankrupt by common Recovery, or other ways or means might cut off or debar from any Remainder, Reverſion, Rent, Profit, Title, or poſſibility into, or out of any of the ſaid Manors, Lands, Tenements or Hereditaments, 21 *Jac. cap.* 19.

Lands deſcended.

(54). Alſo Lands, Tenements, *&c.* purchaſed by, or deſcended or come to the Bankrupt before his debts payed or agreed for, as appears by 13 *Eliz. cap.* 7. where it is thus; That if any perſon or perſons, which is, or ſhall be publiſhed and declared to be a Bankrupt, by vertue of this Act, ſhall at any time hereafter, purchaſe any Lands, Tenements, Here-

ditaments, Free or Copy; or Offices, Fees, Goods or Chattels; or that any Lands, Tenements, Hereditaments, Free or Copy, Offices, Fees, Goods or Chattels, ſhall deſcend, revert, or by any means come to any ſuch perſon or perſons being Bankrupts, as is aforeſaid: before ſuch time as their debts due to their Creditors ſhall fully be ſatisfied, and payed, or otherwiſe agreed for: That then the ſaid Lands, *&c.* ſhall be ſold by the ſaid Commiſſioners, or the more part of them, for and towards the payment of the Creditors, in ſuch manner, as other Lands, *&c.* of the Bankrupts, which they had when they were firſt declared to be Bankrupts, ſhould or might have been, *&c.* 13 *El. cap.* 7.

(55.) If after the commiſſion awarded, *&c.* and diſtribution made of all the Bankrupts Eſtate, towards the ſatisfaction of the Creditors; every Creditor having an equal part: Lands, Goods, *&c.* deſcend or come to the Bankrupt; Mr. *Stone* makes a *quere* (*fo.* 17.) whether in ſuch caſe, they ſhall be ſubject alſo to a new ſale or diſtribution: And it ſeems that they ſhall, for the Commiſſioners power is not fully executed until the Creditors be ſatisfied.

56. The

(56.) The Commiſſioners have alſo power to ſell Lands, Tenements, &c. of the Bankrupts extended, by ſuch as pretend to be accomptants to the King; by 21 *Jac. cap.* 19. It is thus; *If it ſhall happen any Lands, Tenements, &c. Goods, Chattels, Debts, or other Eſtate of any Bankrupt to be extended, after ſuch time as he or ſhe is become a Bankrupt, by any perſon or perſons, under colour or pretence of his or their being accomptant, or any ways indebted unto our Soveraign Lord the King's Majeſty, his Heirs or Succeſſors: That then, it ſhall and may be lawful, to and for the ſaid Commiſſioners, to examine upon Oath, whether the ſaid debt were due to ſuch debtor or accomptant, upon any bargain or contract originally made between ſuch accomptant, and the ſaid Bankrupt, &c. and his or their Servants: And if the ſaid Bargain or Contract was originally made, to and with any other perſon or perſons, than the ſaid Debtor or Accomptant, or for the uſe or truſt of any other perſon or perſons: Then it ſhall and may be lawful, to and for the ſaid Commiſſioners, or the greater part of them, to order and diſpoſe of all ſuch Lands, &c. to and for the uſe of the Creditors, which ſhall* Lands extended.

ſeek relief by the ſaid Commiſſion: And that the order and diſpoſition of the ſaid Commiſſioners, or the greater part of them, ſhall be good and available againſt the ſaid extent; And that ſuch perſon and perſons, to whom the ſaid Lands, &c. ſhall be bargained, ſold, &c. by the ſaid Commiſſioners as aforeſaid, or the greater part of them, ſhall have good remedy to have, demand, and recover the ſame, againſt ſuch perſon or perſons that ſhall detain the ſame, &c. 21 Jac. cap 19.

Lands conveyed by the Bankrupt, *bona fide.*

(57.) The Commiſſioners cannot ſell any Lands, Tenements, Hereditaments, conveyed by any ſuch Bankrupt (*bona fide*) before he became Bankrupt: At the later end of 13 *El. cap.* 7. there is ſuch a Proviſo, *viz.* Provided always, that this Act ſhall not extend to any Lands, Tenements or Hereditaments, free or copy-hold, which heretofore hath been aſſured by any ſuch Bankrupt; or hereafter ſhall be aſſured by any Bankrupt, before he became Bankrupt; ſo that always ſuch aſſurance be made, *bona fide*, and not to the uſe of the Bankrupt himſelf only, or his Heirs: And that the parties to whoſe uſe ſuch aſſurance hath or ſhall be made, be not at or before the making of ſuch aſſurance, privy,

or

or conſenting to the fraudulent purpoſe of any ſuch Bankrupt, to deceive his Creditors, 13 *El. cap.* 7.

(58.) It was reſolved (*Cook lib.* 2. 26. *a.* caſe of Bankrupts) by the Court, That the Proviſo concerning gifts and grants (*bona fide*) doth not make any gift or grant good, which the Bankrupt made, after that he became Bankrupt, but to exclude him out of the penalty of the Act: I ſuppoſe this reſolution ſhould be applied to that part of 13 *El. cap.* 7. which impoſeth the penalty or forfeiture of double the value, for detaining or poſſeſſing fraudulently by covin or collution any debts, *&c.* Lands, Tenements, *&c.* of the Bankrupts, other than ſuch as are due, *&c.* and the ſame to proceed *bona fide*, without fraud or covin, *&c.* although in *Poulton*, the ſaid Book and reſolution be quoted in the Margine oppoſite to the Proviſo; before ſet down in Sect. 57.

(59.) Alſo the Chattels and Goods of the Bankrupts are ſaleable, *&c.* by the Commiſſioners, 13 *El. cap.* 7. Perſonal Eſtate. 1. Chattels Real.

Chattels real, as Leaſes for years. A Leaſe for years is made, Provided that the Leſſee ſhall not alien; the Leſſee becomes a Bankrupt; It is a *Quære* in Mr. *Stones* Lecture, *fo.* 15. whether the ſale of

of the Commiſſioners to be a forfeiture? To which it may be anſwered in the negative, that it is not, becauſe this intereſt is tranſmitted by Act of Parliament, to which every man is intended party, and not by ſale of the Leſſee.

Offices. (60.) Offices are likewiſe mentioned in 13 *Eliz. cap.* 7. and made ſaleable by the Commiſſioners; which by *Stowe* in his lecture *fo.* 13. is intended to be Offices of Inheritance, *&c.* as the Warden of the Fleet, and ſuch like, and not Offices of Truſt, *&c.* And by 3 *H.*7. *cap.* 12. any Offices which concern the adminiſtration of Juſtice or Clerkſhip in any Court of Record, or which concern the Kings Treaſure, Revenue, Cuſtoms, *&c.* cannot be bargained or ſold for Money, but ſuch bargain and ſale is void; and both buyer and ſeller made incapable, *&c.* Therefore doubtleſs, ſuch offices cannot be aſſigned by the Commiſſioners, in ſatisfaction of a Debt of the Bankrupts, nor are comprehended within the ſaid Statutes, there being other Offices that may be ſold; and ſo the words of the Statute ſatisfied; and Offices of Truſt are individually annexed to the perſon; *vid. Coke lib.* 9. 48. *a.* The Earl of *Shrewsburies* caſe.

61. Second-

(61.) Secondly, The Bankrupts perſonal Eſtate, Goods or Chattels of the Bankrupt, whereſoever to be found; by 13 *El. cap.* 7. are made ſaleable by the Commiſſioners: They may ſell a Bankrupts goods in *Ireland*, *Stone* in his Lecture *fo.* 90. *A.* hath an advowſon, the Church becomes void, and then *A.* becomes a Bankrupt: It is made a *Quere* by Mr. *Stone* in his Lecture, whether the Commiſſioners may ſell it; and I ſuppoſe it may be anſwered negatively, that they cannot ſell it; for it is a thing in Action, and ſo not ſaleable by the Common Law; and no particular power is given by any of the Acts for ſale of it, as there is for ſale of Debts due to the Bankrupt, as hereafter appeareth: And without doubt, if the Commiſſioners preſent any one for money, it is Simony. 2. Chattels perſonal.

(62.) Leaſes, Goods, Chattels, or Debts of the Bankrupt, by him conveyed or procured to be conveyed or tranſferred to any of his Children, or other perſon or perſons, except the ſame ſhall be purchaſed, conveyed, or transferred, for or upon marriage of any of his or her children, both the parties married being

at

of years of conſent, or ſome valuable Conſideration, 1 *Jac. cap.* 15.

(63.) Any Goods or Chattels that ſhall by any means come unto the Bankrupt, before ſuch time as his Debts ſhall be ſatisfied or agreed for; as well as other Chattels which the Bankrupt had, when firſt declared to be a Bankrupt, 13 *Eliz. cap.* 7.

(64.) Goods and Chattels extended of the Bankrupts, by pretended accomptants or debtors to the King; *vide devant*, Sect. 56.

Goods extended.

(65.) Goods and Chattels of the Bankrupt extended, or taken in execution. Goods of the Bankrupts were extended by vertue of a Statute; and the extent was before he became Bankrupt, but the *Liberate* after; and held that they could not be ſold by the Commiſſioners of Bankrupts; becauſe being extended they are in *Cuſtodia Legis*, ſo that the cognizors have no power to give, ſell, or otherwiſe diſpoſe of them: And although the Cognizee hath no abſolute property in them by the extent, and before the *Liberate*, becauſe at the return of the *Liberate*,

berate, he may refuſe them, if he will: yet that is for the advantage of the Cognizee, and the Cognizor hath no property in them, but only in caſe where the Cognizee refuſeth them; for the goods are bound by the *Teſte* of the Writ of extent or execution ſued: and when the *liberate* is ſued, it hath relation to the extent; and they are but as one extent: *Crook*, *part* 3. 149, 150. *Audley verſus Halſey.*

Goods poſſeſt by the Bank. rupt.

(66.) Goods and Chattels, whereof the Bankrupt hath the poſſeſſion and diſpoſal as his own: The words of the Statute are, *Whereas many perſons before they become Bankrupt do convey their goods unto other men, upon good conſideration, and yet keep the ſame, and are reputed owners thereof, and do diſpoſe of the ſame, as their own, Be it enacted, that if any perſon or perſons ſhall become a Bankrupt, and at ſuch time as they ſhall ſo become a Bankrupt, ſhall by the conſent and permiſſion of the true owners or Proprietors, have in their poſſeſſion, order, and diſpoſition, any of the goods or chattels, whereof they ſhall be reputed owners, and take upon them the ſale, alteration, and diſpoſition of them as owners, the*

Com-

Commiſſioners, or greater number may ſell, and diſpoſe of the ſame, for the benefit of the Creditors. 21 Jac. 19.

(67.) Goods or Chattels paſſed away upon condition, or power of redemption by the Bankrupt, 21 *Jac.* 19. *vide*, before *Sect.* 51.

Debts. (68.) Debts due to the Bankrupt are ſaleable, by 13 *El. cap.* 7. expreſly; and although they are transferred into other mens names, by 1 *Jac. chap.* 15.

(69.) In an action upon the Caſe brought for words ſpoken by the Defendant againſt the Plaintiff, the Plaintiff recovered of the Defendant for Damages and Coſts, twelve pounds: And after the execution ſued, and money levied by the Sheriff (before the return of the Writ) the Plaintiff becomes a Bankrupt, and the ſaid twelve pounds is aſſigned by the Commiſſioners to the creditors, and the money being brought into Court, the Plaintiff [now a Bankrupt] moves for it; and the Creditors to whom the ſame was aſſigned, likewiſe moved for it; and by *Jones* and *Hide* Juſtices, the aſſignment was good, becauſe it was the Bankrupts Debt, and forfeitable,

ſeitable by out-lawry: but *Whitlock* and *Crook* Juſtices *contra*; becauſe the Sheriff levying of the money before the party became a Bankrupt, it was in *Cuſtodia legis*, and the Creditors cannot give a diſcharge, nor are they parties in Court, and if the Judgment ſhould be reverſed, not compellable to make reſtitution: and afterwards it was judged accordingly; and that the money be delivered to the plaintiff, he acknowledging ſatisfaction: alſo it was ſaid, that the money was not the Plaintiffs until payed out of Court. *Crook, part.* 3. 166, 167. *Benſon verſ. Flower and Backwel.*

(69.) *A.* hath one in execution for Debt, and then he becomes a Bankrupt, the Commiſſioners aſſign the Debt, if the party eſcape, whether may this Aſſignee have an action of eſcape: this is a Quere in Mr. *Stones Lecture*, fol. 9. And I conceive may be anſwered in the affirmative; for by *Weſtminſter* 2. *chap.* 11. Debt is given in ſuch caſe againſt the Jaylor by the equity of that Statute, [for the words extend only to Accomptants.] And by 1 *Jac. chap.* 15. It is thus: *That the Commiſſioners of Bankrupts,*

rupt, or the greater part of them ſhall have power to grant and aſſign, or otherwiſe to order and diſpoſe all or any of the Debt due, or to be due, to and for the benefit of the ſaid Bankrupt, by what perſon or perſons ſoever, or in what manner or form ſoever, to the uſe of the Creditors of the ſaid Bankrupt, according to the true intent of the former Statute of Bankrupts: And that the ſame grant, aſſignment, or diſpoſition of the ſaid Debts, in form aforeſaid, to be made by the ſaid Commiſſioners, or any part of them, ſhall ſo veſt the property, right, and intereſt of the ſaid Debt and Debts, in the perſon or perſons of him, her, or them, to whom it ſhall be granted, &c. by the ſaid Commiſſioners, as fully to all intents and purpoſes, as if the ſaid Bill, Bond, &c. Judgment, or Contract, whereon the ſaid Debt, or Debts ſhall ariſe or grow, had been with the perſon or perſons to whom the ſame ſhall be granted, &c. And that after ſuch grant, aſſignment, or diſpoſition: neither the Bankrupt, nor any other ſhall have power to receive, recover, or releaſe it, &c. 1 Jac. 15. So that by the aſſignment, the Debt is veſted to all intents and purpoſes in the Grantee, as if he had been the original

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Debtor, might have had his action againſt the Sheriff, therefore the Grantee: and the Statute ſhall be liberally expounded for the relief of Creditors, eſpecially, ſeeing in this caſe the Aſſignee or Grantee, is without any remedy for the Debt, if he cannot relieve himſelf againſt the Sheriff.

(70.) And Mr. *Stone* in his *Lecture* makes another Quere, whether he that comes in as Creditor, and hath a debt made over unto him by the Commiſſioners, *&c.* may not be barred notwithſtanding by the Statute of limitations. And it may be anſwered that he ſhall be barred, for neither of the Statutes gives the Aſſignee any larger power, *&c.* than the original debtor had: alſo the Statute of limitation, was made for quieting of mens eſtates, and avoiding of Suits, which Statute, ſhall not be taken away without ſpecial words.

Thin diſpoſed of by the Bankrupt.

(71.) Such things as the Bankrupt himſelf diſpoſed to the ſatisfaction of ſome of the Creditors, after that he became a Bankrupt, for the Statute of 13 *Eliz. chap.* 7. is, *That the Commiſſioners muſt diſtribute to the Creditors ſhare and ſhare alike*, &c. *and that every ſuch bargain, ſale*, &c. *ſhall be good*

and effectual against the offendors and all persons, &c. And if the debtor after that he becomes a Bankrupt, may prefer one Creditor before another, it would be unreasonable, and a great defect in Law, that after he hath utterly discredited himself by becoming a Bankrupt, the Law should intrust him with the distribution of his Goods. *Cook, lib. 2. 25. b. 26. a. Case of Bankrupts.*

Now observe the means of discovery, and obtaining of the Bankrupts Estate.

(72.) It is enacted by 21 *Jac. chap.* 19. that the Commissioners, in execution of their Commission, or the greater part of them, or any other person or persons, officer, or officers by them or the greater part of them to be deputed, or appointed by their warrant or warrants under their hands and seals, may break open the house or houses, chambers, shops, ware-houses, doors, trunks, or chests of the Bankrupt, where the said Bankrupt, or any of his goods, or estate shall be, or reputed to be, and seize upon and order the Body, goods, chattels, ready money, and other estate of such Bankrupt, as by former Laws are limited and appointed, &c. 21 *Jac. cap.* 19.

Break open Houses.

73. Next

(73.) Next by examination and punishment of persons: 1. The Bankrupt himself, they may compel him to come before them (*vide* before *Sect.* 39.) They have power to examine him upon oath, upon such interrogatories touching his Lands, Tenements, goods, chattels, debts, bills, bonds, books of accompt, and such other things as may tend to disclose his or their estate, or the secret grants, conveyances, and eloyning of his, her, or their Lands, Tenements, goods, money and debts, as they shall think fit, 1 *Jac. chap.* 15. Examination of persons by the Commissioners.

(74.) Then observe the Bankrupts punishment in case of his refractoriness or deceit: first, for his not appearance before the Commissioners, (*vide* before *Sect.* 39.) Secondly, in case he refuse to be examined, or answer not fully to every interrogatory to him to be administred by the said Commissioners or the greater part of them, it shall be lawful for the said Commissioners, or the greater part of them, to commit the said offendor or offendors to some streight or close imprisonment, there to remain, until he, she or they shall better conform him, or her self: 1 *Jac. chap.* 15.

Bankrupts perjury.

(75.) Thirdly, For his perjury: *If upon his, her, or their examination, it ſhall appear that he or ſhe, or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the Creditors of the ſaid Bankrupt, to the value of* 10 lib. *of lawful money of* England, *or above; the party ſo offending ſhall or may be thereof indicted, in any of the Kings Majeſties Courts of Record, and being lawfully convicted thereof ſhall ſtand upon the Pillory in ſome publick place, by the ſpace of two hours, and have one of his Ears, nailed to the Pillory and cut off:* 1 Jac. cap. 15.

His fraud.

(76.) Fourthly, For the Bankrupts fraud: *And if any Bankrupt ſhall upon his or her examination to be taken before the ſaid Commiſſioners* (executing the ſaid Commiſsion) *be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, &c. or other eſtate, or any part thereof to the value of* 20 lib. *or above; to the end and purpoſe to hinder the execution of this Statute, or of any other the aforeſaid Statutes, or thereby to defraud, or delay, or hinder his or her Creditors of the ſame; and ſhall not upon his or her examination, diſcover unto the ſaid Com-*

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miſſioners, and (if it lie in his or her power) deliver unto the ſaid Commiſſioners, all that eſtate, goods, and chattels, ſo fraudulently and deceitfully conveyed away as aforeſaid, or by him, or her, his or her means kept or detained from the ſaid Commiſſioners: or that cannot make it appear unto the ſaid Commiſſioners, that he or ſhe hath ſuſtained ſome caſual loſs, whereby he or ſhe is diſabled to pay what he, or ſhe then owed; the offendor ſhall or may be indicted for ſuch fraud, or abuſe at the Aſſizes, or general Seſſions, to be holden, before the Judges of Aſſize, or Juſtices of Peace, of the County or place, where he, or ſhe ſhall become Bankrupt: and if upon ſuch Indictment, or Indictments, the Bankrupts be thereof convicted, he, or ſhe ſo convicted, ſhall be ſet in the Pillory in ſome publick place, for the ſpace of two hours, and have one of his, or her ears nayled to the Pillory, and cut off. 21 Jac. cap. 19.

(77.) Secondly, By examination of the Bankrupts wife: After ſuch time as any perſon ſhall by the ſaid Commiſſioners, executing the ſaid Commiſſion, or the greater part of them, be lawfully adjudged, or declared to be a Bankrupt, the ſaid Commiſſioners, executing ſuch Wife of the Bankrupt.

Commiſſion, ſhall have power and authority upon oath to examine the wife and wives of all and every ſuch Bankrupts, for the finding out and diſcovery of the eſtate and eſtates, goods, and chattels of ſuch Bankrupt or Bankrupts, concealed, kept, or diſpoſed of by ſuch wife or wives, in their own perſons, or by their own act or means, or by any other perſon or perſons: And that ſhe, and they, the ſaid wife and wives ſhall incur ſuch danger and penalty, for not coming before the ſaid Commiſſioners, or for refuſing to be ſworn, or examined; or for not diſcloſing of the truth, upon her, or their examination or examinations, as in and by the former Laws, or either of them, is already made and provided againſt any other perſon or perſons in like caſes: 21 *Jac. chap.* 19.

Other perſons.

(78.) Thirdly, By examination of other perſons. Any perſon known or ſuſpected to have any of the Bankrupts eſtate, debts, *&c.* Wherein note. Firſt, the power of the Commiſſioners to bring them before them; the Commiſſioners upon complaint made to them by any party grieved, knowing, ſuppoſing, or ſuſpecting any of the goods, chattels, wares,

wares, Merchandizes, or debts of such offendor or offendors, to be in custody, use, occupying, keeping, or possession of any person or persons; or any person or persons to be indebted to any such offendor or offendors, and do make relation thereof to the said Commissioners so to be appointed, or the more part of them, That then the said Commissioners, or the more part of them shall have full power and authority to send for, and call before them, by such process, ways, and means, as they shall think convenient, all and every such person or persons, so known, or suspected to have any such goods, chattels, wares, &c. in his or their custody, use, occupation, keeping, or possession, or supposed, or suspected to be indebted to such offendor or offendors: And secondly, to examine them: upon their appearance, the Commissioners may examine them, and every of them, as well by their oaths, as otherwise by such means as the said Commissioners, or the more part of them shall think fit, for and upon the specialty, certainty, and true declaration and knowledge of all and singular such goods, chattels, wares, merchandizes and debts, of any such offendor or offendors, as be supposed, or

ſuſpected to be owing to any ſuch offendor or offendors, 13 *Eliz. chap.* 7.

Refuſing to come before the Commiſſioners.

(79.) And in the next and third place, take notice of the puniſhment of ſuch other perſons; firſt, for their refuſing to come before the Commiſſioners, or to be ſworn and make anſwer. And by the Statute of 1 *Jac. chap.* 15. It is ſet forth, that no good means was appointed by 13 *Eliz.* either by impriſonment, or other penalty, to procure perſons to be ſuſpected to have any part of the money, goods, chattels, or debts of the ſaid offendors, or to be indebted to them, to come before the Commiſſioners, or to be examined by them, *&c.* and then enacts, That if any perſon, or perſons being known, ſuppoſed, or ſuſpected, to have or detain any part of the lands, tenements, or hereditaments, goods, chattels, or debts of the ſaid Bankrupt, or to be indebted to, or for the benefit of the ſaid Bankrupt, ſhall after lawful warning to the ſaid perſon or perſons given, to come before the ſaid Commiſſioners, or the greater part of them, to be examined, refuſe to come, or ſhall not come before the ſaid Commiſſioners at the time appointed, having no

lawful

lawful impediment (ſuch as ſhall be allowed by the ſaid Commiſſioners, or the greater part of them;) or that any ſuch perſon or perſons, having knowledge or warning of any other aſſembly, or meeting of the ſaid Commiſſioners ſhall not come and appear before them, at ſuch time, as he or ſhe may lawfully come, having no ſuch lawful impediment, as ſhall be then made known to the ſaid Commiſſioners, and by them admitted, and allowed as aforeſaid. Or being come before them, ſhall refuſe to be ſworn, and to make anſwer to ſuch interrogatories as ſhall be miniſtred to him or them, according to the true intent and meaning of the ſaid Statute of 13 *Eliz.* or of this Act: That then it ſhall be lawful for the ſaid Commiſſioners, or the greater part of them, to commit to ſuch ward or priſons, as to them, or the greater part of them, ſhall be thought meet, all ſuch perſon and perſons, as ſo refuſe to be ſworn, and make anſwer to ſuch Interrogatories, as ſhall be ſo adminiſtred as aforeſaid: 1 *Jac.* 15.

Refuſing to be ſworn, and anſwer.

Their puniſhment.

(80.) And alſo to direct their warrants to ſuch perſon or perſons, as to them, or the greater part of them ſhall be

be thought meet, to apprehend and arreſt ſuch perſon and perſons as ſhall refuſe to appear before them as aforeſaid, and to bring him, her, or them, before the ſaid Commiſſioners, or the greater part of them, to be examined as aforeſaid; and upon their refuſal, to commit them to ſuch Priſons as the Commiſſioners ſhall think meet, there to remain without Bail or Mainpriſe, until their ſubmiſſion to the Commiſſioners to be examined, &c. 2 *Jac. cap.* 15.

(81.) But by 13 *Eliz. cap.* 7. in caſe any ſuch perſon or perſons upon examination, do not diſcover the truth touching the ſaid things whereof they are examined by the Commiſſioners as aforeſaid, or do deny to ſwear, he is to forfeit double the value of the thing concealed, (*vid. apres*, forfeiture,) which doubtleſs is not taken away by 1 *Jac. cap.* 15. but the impriſonment is thereby added as a further penalty; and to force the parties ſuſpected to have any of the Bankrupts Eſtate, to come before the Commiſſioners and make a diſcovery: Alſo it may be obſerved, that the Statute of 13 *Eliz.* mentioneth only the concealing of the perſonal Eſtate, but 1 *Jac.*

cap.

*cap.*15. Extends to Lands, Tenements, *&c.* as before, that are ſo with-held or conceal'd.

(82.) Thirdly, For their Perjury: If any perſon or perſons, other than the Bankrupt, either by ſubornation, unlawful procurement, ſiniſter perſwalion or means of any others, or by his own act, conſent or agreement, ſhall wilfully and corruptly commit any manner of wilful Perjury, by his depoſition to be taken before the ſaid Commiſſioners, or the greater part of them, as aforeſaid; That then the party or parties ſo offending; and all and every perſon and perſons, that ſhall unlawfully and corruptly procure any ſuch unlawful, wilful, and corrupt Perjury, ſhall or may therefore be indicted in any of the Kings Majeſties Courts of Record; and after his or their conviction thereof, ſhall incur ſuch forfeiture, and receive and ſuffer ſuch pains and puniſhment as are limited by the Statute made concerning Perjury, (*viz.* 5 *El. cap.*9.) Now the puniſhment appointed for Perjury by that Statute is, That the perſon committing Perjury ſhall forfeit 20 *l.* and endure half a years impriſonment without Bail or Mainpriſe, and

Their Perjury. 1 *Jac.* cap.15.

and his Oath never after to be received, *&c.* And if he hath no Goods or Lands of that value; then he is to be ſet in the Pillory, in ſome Market-Town, and to have both his ears nailed, and to be diſabled to be a Witneſs in any Court of Record, *vid.* 5 *Eliz. cap.* 9. and by the ſame Stat. of 5 *Eliz.* the Procurers of Perjury are to forfeit 40 *l.* and if they have no Eſtate of that value, then to ſuffer half a years impriſonment, without Bail or Mainpriſe, and to ſtand in the Pillory by the ſpace of an hour, and in ſome Market-Town next adjoyning to the place where the offence was done, and never after to be admitted to be a Witneſs in any Court of Record.

Concealing the Bankrupts Eſtate.

(83.) Fourthly, Concealing of the Bankrupts Eſtate: Any perſon being known or ſuſpected to have any Goods, Chattels, *&c.* of the Bankrupts, or to be indebted to him, if he doth not upon examination diſcloſe, and plainly declare his knowledge concerning the Premiſes, or doth deny to ſwear; Then every ſuch perſon (upon due proof thereof before the Commiſſioners, by Witneſs, Examination, or otherwiſe, as they ſhall think fit) ſhall loſe and forfeit double the

the value of such Goods, Chattels, Debts, &c. by them or any of them so concealed, 13 *Eliz. cap.*7.

(84.) Fraud: If any person or persons do fraudulently, by covin or collusion claim, demand, recover, possess or detain any Debts, Duties, Goods, Chattels, Lands or Tenements, by writing, trust, or otherwise, which were or shall be due, belonging or appertaining to any such offendor or offendors, other than such as he or they can and do prove to be due by right and conscience for money paid, wares delivered, or other just consideration, or cause reasonable to the just value thereof, before the said Commissioners so to be appointed, or the more part of them, as is aforesaid; and the same to proceed (*bona fide*) without fraud or covin; That then every such person or persons so craftily demanding, having or detaining any such debt, duty, or other thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim, demand, detain or possess, 13 *Eliz. cap.*7. Fraud.

(85.) The said Forfeitures of double the value in both the cases before mentioned, are to be levied and imployed by Forfeitures how imployed.

by the Commissioners, as followeth, *viz.* The said Commissioners, or the more part of them is to levy the same of the Lands, Tenements, Hereditaments, Goods and Chattels of the persons offending, by such ways and means, and in such manner and form as is before limited and appointed for the principal offendor or offendors, debtor or debtors, and the same forfeiture or forfeitures to be distributed and imployed to and for the satisfaction and payment of the debts of the said Creditor or Creditors, in such manner, rate and form, as is by the Statute declared concerning the ordering of the Lands and Tenements, Offices, Fees, Goods and Chattels of such offendor or offendors, debtor or debtors, 13 *Eliz. cap.* 7.

Vid. Post

Over-plus.

(86.) Over-plus: And if it shall fortune the Creditors of any such Bankrupt to be satisfied and payed off their debts and duties, of or with the proper Lands, Tenements, Goods, Chattels, and Debts of the said Bankrupts, or of or with the same and some part of the forfeitures of the said double values, to be forfeited as aforesaid; and that there shall remain an over-plus of the said for-

forfeitures of the double values; That then one moyetie thereof ſhall be by the ſaid Commiſſioners, within convenient time after the levying thereof, paid unto the Queens Majeſty, her Heirs and Succeſſors; and the other moyetie ſhall be by the ſaid Commiſſioners imployed and diſtributed to and amongſt the Poor, within the Hoſpitals, in every City, Town or Country, where any ſuch Bankrupt ſhall happen to be, 13 *Eliz. cap.* 7. But the forfeitures by 1 *Jac. cap.* 15. [being for Perjury and ſuborning of Perjury] is by the ſaid Act to be ſued for, and recovered by the Creditors only, or any of them that will ſue for the ſame, by action of Debt, Bill, Plaint, or Information in any of the Kings Courts of Record; and the ſum and ſums of money ſo recovered, (the charges of ſuit being deducted) ſhall be diſtributed, and divided towards the payment of the ſaid Creditors of the ſaid Bankrupt, 1 *Jac. cap.* 15.

(87.) The allowance to Witneſſes: Provided always, That ſuch Witneſſes as ſhall be ſent for by the Commiſſioners, ſhall have ſuch Coſts and Charges as the Commiſſioners in their diſcretion ſhall

Allowance to Witneſſes.

ſhall think fit: The ſame charges to be rateably born by the Creditors of the ſaid Bankrupt, according to the proportion of each of their ſeveral Debts, 1 *Jac. cap.* 15.

The next thing to be conſidered, is the manner of the ordering and diſpoſal of the Bankrupts Eſtate by the Commiſſioners.

In General. In Particular. View, appraiſement.

(88.) Firſt, in General, The Commiſsioners may according to their diſcretion, order the eſtate of the Bankrupt for the Creditors ſatisfaction, 13 *Eliz. cap.* 7. Secondly, more Particularly; Firſt, by views and appraiſement; The Commiſſioners may cauſe the Bankrupts Lands, Tenements, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandiſes and Debts, to be ſearched, viewed, rented, and appraiſed, to the beſt value they may, 13 *Eliz. cap.* 7.

Sale.

(89.) Secondly, by Sale: 1. To whom may they ſell? The Statute of 13 *Eliz. cap.* 7. is, that the Commiſſioners may ſell, without mentioning to whom; and by 21 *Jac.* 19. which giveth power to the Commiſſioners to ſell entailed lands,

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it is to any perſon or perſons; which ſurely is intended to perſons capable, and not to aliens, although they be Creditors.

(90.) Thirdly, Of what? Of all Lands, Tenements, Hereditaments, and Deeds, Evidences and Writings touching the ſame; and of all Fees, Offices, Goods and Chattels of the offendor, as is before ſet down. of what.

(91.) Fourthly, in what Manner? as to the Lands, Tenements, Goods and Chattels in general of the Bankrupts; the ſale is to be by Deed Indented and enrolled in any of his Majeſties Courts of Record, or otherwiſe to be ordered by the Commiſſioners, for ſatisfaction of the Creditors, 13 *Eliz. cap.* 7. And therefore, although the ſale be not by Deed inrolled, according to the words of the Act, yet it is good enough, *Cooke, lib.* 2. 25. 26. caſe of Bankrupts: A Rent Seck, whereof there is no ſeiſin, ſhall be ſold, and the ſale is good without Attornement; *Stones* Lectura, 174. *quere.* How.

(92.) As to lands intail'd of the Bankrupt Intail'd Lands.

rupt, the Commissioners, or the greater number of them, are impowred by 21 *Jac. cap.* 19. by Deed Indented and Inrolled within six months after the making thereof, in some of his Majesties Courts of Record at *Westminster*, to grant, bar gain, sell and convey any Manors, Lands, Tenements, or Hereditaments, wher eof any Bankrupt is or shall be any ways seized of any estate in Tail, in Possession, Reversion, or Remainder, and whereof no Reversion or Remainder is or shall be in the Kings Majestie, his Heirs or Successors, of the gift or provision of his Majesty, his progenitors, his Heirs or Successors, to any person or persons, for the relief and benefit of the Creditors, 21 *Jac. cap.* 19. *vide* before Sect. 53.

Copy-hold.

(93.) As to Copy-hold, or customary Lands, they are to be sold by Deed Indented and Inrolled in any of his Majesties Courts of Record, &c. as other the Lands and Estate of the Bankrupt are appointed to be by 13 *Eliz. cap.* 7. But by the same Statute it is provided, That all and every person or persons, to whom any such sale of Copy-hold, or customary Lands or Tenements shall be made;

shall

ſhall, before ſuch time as they or any of them ſhall enter or take any profits of the ſame Lands or Tenements agree, & compound with the Lords of the Mannors of whom the ſame ſhall be holden, for ſuch Fines or Incomes as heretofore have been moſt uſually and accuſtomed to be yielded or paid therefore. And upon every ſuch agreement or compoſition the ſaid Lords for the time being, at the next Court to be holden at or for the ſaid mannors, ſhall not only grant unto the ſaid Vendee or Vendees upon requeſt the ſame Copy or Cuſtomary Lands or Tenements by Copy of Court-Roll of the ſaid Manors, for ſuch eſtate or Intereſt as to them ſhall be ſold, and reſerving the antient Rents, Cuſtomes and Services, but alſo, in the ſame Court, admit them Tenants of the ſame Copy or Cuſtomary Lands, as other Copyholders of the ſame Mannors have been wont to be admitted, and to receive their fealty accordingly, 13 *Eliz. cap.* 7.

(24.) A Copy-holder ſurrenders, & before admittance, *ceſtuy que uſe*, becomes a Bankrupt; The Commiſſioners ſell the Copy-hold, whether ſhall the Lord have 2 Fines, *viz.* one upon the

admittance of which should have been made to *cestuy que use*, if he had not become a Bankrupt; and another upon the admittance of the person that comes in by sale of the Commissioners of Bankrupts: and this is a *quere* in Mr. *Stones* Lecture, fol. 137. and it is there compared to a surrender made by the Heir before admittance, which is held to be good, but not to prejudice the Lord of his Fine due upon the Descent, *Cooke, lib.* 4. 226.

(95.) If the Vendee of a Copy-hold tender to the Lord a competent Fine, and the Lord refuse it; The Vendee may enter, *Stones* Lecture, 176. The Commissioners may sell Copy-hold intail'd, which by custome may be intail'd and cut off, otherwise, if there be no such custome, *Stones* Lecture, 176. I conceive, if there be no such custome, then it is in nature of a Fee-simple conditional at the Common Law, and then if the condition be performed, *viz.* if the Copy-holder hath issue, *&c.* the Commissioners may sell it, as I suppose.

(96.) As to a Condition, Lands, Goods, *&c.* of the Bankrupt, made over by

by him upon condition or power of Redemption, the Commiſsioners before the time of the performance of the condition, may appoint under their hands and ſeals, ſuch as they ſhall think fit, to perform the condition; and after ſuch performance, ſhall diſpoſe of ſuch lands or goods for the Creditors advantage as fully as of any other of the Bankrupts Eſtate, 21 *Jac. Cap.* 19. *vid. devant.* Sect. (51.)

(97.) As to lands, *&c.* extended by a pretended Debtor or accomptant to the King, after that the party ſhall become a Bankrupt, 21 *Jac. cap.* 19. *vid.* Sect. 56. where it is ſet forth at large.

(98.) As to debts owing to the Bankrupt, *vid.* before Sect. 68. Suppoſe a Bankrupt be indebted to one 20 *l.* and to another 10 *l.* and hath a debt of 30 *l.* due to him by Bond; whether may the Commiſsioners aſsign the Bond to the two Creditors joyntly, and it was held by the Court, that it was to be divided and aſsigned according to the words of the Act, *viz.* to every Creditor a portion, part and part-like: Then another queſtion was offered, whether the Aſ-

signees might joyn in suit; and by *Warberton*, one of the Justices, part being assigned to one, and part to another, the Act of Parliament doth so operate upon it, that they shall sue severally; for he said, by the custome of *London*, part of a debt might be attached, *Godbolts* Reports, 195. *p.* 282.

Distribution of the Bankrupts Estate.

(99.) Thirdly, Note, the distribution made by the Commissioners, of the Bankrupts Estate, wherein observe, first, to what Creditors in general: It is enacted by 21 *Jac. cap.* 19. That the said Act, and all other Acts of Parliament formerly made against Bankrupts, should extend to strangers born, as well Aliens as Denizens, as effectually as to the natural born Subjects, both to make them subject to the Law, as Bankrupts, as also to make them capable of the benefit of contribution, as Creditors by those Laws: So, that satisfaction is to be made to all, as well Aliens as Denizens, &c.

(100.) Also, It is enacted by 21 *Jac. cap.* 19. That for the better distribution of the Lands, &c. Goods, Chattels, &c. of the Bankrupt, to and amongst his Creditors; The Commissioners or the greatest part of them, shall and may

may Examine upon Oath, or by any other wales or means, as to them shall seem meet, any person or persons for the finding out, and discovery of the truth and certainty of the several debts due and owing to all such Creditor or Creditors, as shall seek relief by such course of Commission to be sued forth, &c. 21. *Jac.* 19.

(101.) *A.* and *B.* are sureties for *I S.* for the payment of Money, and had Counter-Bonds from *I S.* to save them harmless, the money was not payed at the day, the sureties pay it: *I S.* after becomes a Bankrupt; Resolved, that *A.* and *B.* were Creditors, within the Statutes of Bankrupts: *Crooke, part* 2. 127. *Osborne* and *Churchman's* case; Mr. *Stone* in his Lecture, fol. 18. makes a *Quærie*; whether, one becoming a Creditor to the Bankrupt after that he had notice that he was a Bankrupt, might be a Creditor, relievable within the Statutes: To which it may be answered in the negative; for if the Law disables him to dispose of his Estate, (after he becomes a Bankrupt) directly Then he cannot dispose of it by a mean, *viz.* by becoming a Debtor, and so to make

his Lands and Goods liable to his Debt, if in the case before, such a Creditor were relieveable: and *Stone* seems to be of the same opinion, when he saith; A Bankrupt is committed to Prison, because he will not answer Interrogatories, the Gaoler gives him credit for victuals, he shall not be relieved, although he come in before distribution, fol. 183.

(102.) A Merchant is imprisoned, and after becomes a Debtor to *A.* and then the six months passe, *A.* is a Creditor relievable; for he is not a Bankrupt by relation, *Stones* Lecture, 182. The Statute of 21 *Jac. cap.* 19. makes one a Bankrupt by relation from the time of his Arrest, only in two cases, *viz* either when he makes an Escape, or comes out upon common Bail, which enumeration I suppose, excludes (relation) in other cases, in a penal act of Parliament.

(103.) A Bankrupt is convicted for inmates, and the Statute gives an action of Debt in such case to the Lord of the Leet, *&c.* he is no Creditor, within the Statute of Bankrupts; *Stones* Lecture, fol. 21. for I conceive this is not properly

perly a Debt, but only a means given to recover a Forfeiture, and by *Stone*, a Mortgages of Lands may chuse whether he will come in as a Creditor, fol. 181. There is before a special provision for satisfying of a condition by payment of the money, &c. by which it is intended, that the Mortgagee was never to be accompted as a Creditor.

(104.) It was decreed in *Star-Chamber*, that a Merchant for a wrong done by him to *I.S.* should pay him 20*l.* and the Merchant becomes a Bankrupt, *I.S.* is no Creditor, *Stones* Lecture, 184. for this is no Debt due for moneys borrowed, or upon any original contract, but only a payment laid on by the Court, and an action of Debt (as it is conceived) lies not for it; but only the party is to be punished by the Court, if he perform not the decree.

(105.) Secondly, more particularly, any Creditor coming in within four months after the commission sued forth by 1 *Jac. cap.* 15. The words are; And that it shall and may be lawful for any of the Creditors of the said Bankrupt, within four months after any such Commission

miſſion ſhall be ſued forth, and until diſtribution ſhall be made by the ſaid Commiſſioners for the payment of the Bankrupts debts, as in ſuch caſe hath been uſed to partake and joyn with the other Creditors that ſhall ſue forth any ſuch Commiſſion for ſatisfaction or payment of his, her, or their debts to him or them owing, without any let, hindrance or diſturbance of any of the ſame Commiſſioners, or of any of the other Creditors of the ſaid Bankrupts: the ſame Creditors ſo coming in, to contribute to the charge of the ſaid Commiſſion: and that if the Creditors come not in within four months, then the Commiſſioners to have power to diſtribute: 1 *Jac. ch ap.* 15.

(106.) In a Caſe of one *Ruggles* of *Suffolk*, upon view of the Statutes of 13 *El. c.* 7. & 1 *Jac. c.* 15. of Bankrupts, it was reſolved by the Court, that if certain Creditors ſue a Commiſſion, and others within four months after, or more, being Creditors, come before diſtribution, and will joyn in the charge of the Commiſſion, and all that belongs to it, and tender their parts thereof: that they ſhall not be refuſed, but ſhall have their equal parts, as Creditors; but if any

any distribution be made of any part of the estate, no Creditors are to be admitted after, that came not in before: *Hobart*, 287, *Ruggles Case*.

(107.) A Commission was sued out by some of the Creditors of the Bankrupt, and they pursued it; and the Lands were sold, & after other Creditors prayed to be joyned with them. Resolved in this case, First, That the Commissioners may sell and prepare for distribution, presently upon the execution of the Commission, but, untill the four months past, they may not proceed to distribution. Secondly, That in this case the offer of the Creditors, to be joyned was not an effectual offer, without offering to be contributory to the charge, but to offer any particular sum is not necessary; and these words (*for the charge of the Commission*) are to be extended to all charges, arising in suing forth of the Commission, and in execution, and defence thereof. Thirdly, Resolved, That at any time before distribution, the Creditors may come & pray to be joyned, but after the four months past, and distribution made, they come too late for so the distribution may be made void'

Put-

Hutton 37, 38. *Ruggles case*; *Hughes Abridgments*, 316. *Case* 2.

Time of distribution.

(108.) Next, observe the time of satisfaction, or distribution, it seems it must not be, untill four months after the Commission sued forth; for so much time is given to other Creditors to come in and joyn in the Commission, and if the Creditors come not in within that time, the Commissioners may distribute, 1 *Jac. chap.* 15.

Manner of distribution.

(109.) The manner of the distribution: No respect is to be had to the nature of the security, for by 13 *El.* 7. the Commissioners are to sell, or otherwise to order the Bankrupts estate, for true satisfaction and payment of the Creditors, rate and rate like, according to the Quantity of his or their debts, 23 *El. chap.* 7. A debt due to the Bankrupt by Bond, cannot be assigned to two of his Creditors joyntly, but part to one and part to another, and by vertue of the Statutes, they may sue severally. &c. *Godbolts Reports*, 195.

(110.) The Commissioners ought to make a several distribution to the Creditors, and not a joynt-sale, for the Act saith

ſaith † it muſt be to every one, rate, and † 13 El.
rate-like; but where a debt is joyntly 7.
due, there the Commiſſioners may ſatiſfie the ſame, by a joynt ſale to them, *Cook, lib. 2. 26. b. Caſe of Bankrupts.*

(111.) All and every Creditor, and Creditors, having ſecurity for his or their ſeveral debts by Judgment, Statute, Recognizance, ſpecialty with penalty, or without penalty, or other ſecurity, or having no ſecurity, or having made attachment in *London*, or any other place, by vertue of any cuſtom there uſed of the goods and chattels of any ſuch Bankrupt, whereof there is no execution or extent ſerved and executed, upon any the Lands, Tenements, Hereditaments, Goods, Chattels, and other eſtate of ſuch Bankrupt, before ſuch time, as he, or, ſhe, ſhall or do become Bankrupt, ſhall not be relieved upon any ſuch Judgment, Statute, Recognizance, Specialty, Attachments, or other ſecurity for any more than a rateable part, of their juſt and due debts, with the other Creditors of the ſaid Bankrupts, without reſpect to any ſuch penalty or greater ſum contained in any Judgment,

Statute,

Statute, Recognizance, Specialty, &c. or other ſecurity, 21 *Jac. chap.* 19. I ſuppoſe ſecurity by Mortgage of Lands, cannot be within this Statute, for there is particular proviſion for the ſame, in the ſame Statute, 21 *Jac.* 19. nor are lands extended as it ſeems within the ſaid clauſe, by reaſon of the words before, [*whereof there is no execution or extent ſerved or executed.*]

The next thing conſiderable is, the effect of the diſtribution, made by the Commiſſioners, as aforeſaid.

(112.) Firſt in general, as to Lands, Tenements, Hereditaments, goods, chattels, and other eſtate of the Bankrupt: by 13 *Eliz. chap.* 7. It is enacted, That every direction, order, bargain, ſale, and things done by the ſaid perſons, ſo authorized [*viz. the Commiſſioners or greater number of them*] ſhall be good and effectual in the Law, to all intents, conſtructions and purpoſes, againſt the ſaid offender or offenders, debtor or debtors, his or their wife or wives, heir and heirs, child and children, and ſuch perſon and perſons, as by joynt purchaſe with the ſaid offender or offenders, ſhall have any eſtate,

eſtate, or intereſt in the premiſes; and againſt all other perſon and perſons, claiming by, from, or under ſuch offender or offenders, debtor or debtors, by any Act or Acts, had, made, or done, after any ſuch perſon ſhall become Bankrupt, as aforeſaid; and alſo againſt the Lords of the Mannors, *&c.* [*vide* after for Copy-holds,] 13 *Eliz. chap.* 7. But not to bar any purchaſer upon valuable conſideration, unleſs the Commiſſion be ſued forth within five years after the party becomes a Bankrupt; by 21 *Jac. chap.* 19.

(113.) Secondly, As to Lands intailed of the Bankrupts: the Statute gives power to the Commiſſioners to grant, bargain, and ſell by deed inrolled, Lands, *&c.* intailed of the Bankrupts, [*vide devant, Sect.* 53.] and then adds, that all and every ſuch grants, bargains, ſales, and conveyances ſhall be good and available in the Law, to ſuch perſon or perſons, and their heirs, againſt the ſaid Bankrupts, and againſt all and every the iſſue of the bodies, of ſuch Bankrupts, and againſt all, and every perſon or perſons, claiming any eſtate, right, title, or intereſt, by, from,

Lands intayled.

from, or under the ſaid Bankrupts, after ſuch time as ſuch perſon ſhall become Bankrupt, and againſt all and every ſuch perſon or perſons whatſoever, whom the ſaid Bankrupt, by common Recovery, or other way or means might cut off, or debar from any remainder, reverſion, rent, profit, title, or poſſibility, into or out of any of the ſaid Mannors, Lands, Tenements, or hereditaments: 21 *Jac. chap.* 19.

Copy-hold. (114.) Thirdly as to the Copy holds, the ſale and diſpoſition of them ſhall be good againſt the Bankrupts, to all intents and purpoſes, and againſt his or their wife or wives, heir and heirs, in like manner, as before for his other eſtate, *Sect.* 45. for there is no diſtinct clauſe for the Copy-holds; *viz. And alſo againſt the Lords of the Mannors, whereof the ſaid Cuſtomary, or Copy-hold Lands been holden, their Heirs, Succeſſors, and Aſſigns, and every of them:* and there is a *Proviſo* added, That the Vendees of ſuch Copy-holds ſhall compound for their Fines with the Lords before entry: *vide Sect.* 93. before.

(115.) The ſale of the Commiſſioners

ners doth veſt the Copy-hold eſtate, ſo in the Vendee before admittance, that the ſaid Bankrupt cannot be ſaid to be Tenant; and therefore if he die before admittance, his wife ſhall not have any Cuſtomary eſtate, which by the cuſtom ſhe ought to have, when her husband dies Tenant; the Vendee is only excluded by the Statute from entry, or taking of the profits, before compoſition made with the Lord, which is only for the Lords benefit, and not the Copy-holders; alſo it was held, that after compoſition for the time, and the admittance of the Vendee, it ſhall relate to deveſt all Cuſtomary eſtates happening ſince the ſale, and before the ſaid compoſition and admittance. *Cro. 3, part 3. 568, 569. Parker verſ. Edith Bleek.*

(116.) If two Joynt-tenants be of Copy-hold Lands in Fee, and the one out of Court according to the cuſtom, ſurrender his part to the Lords hands, according to the cuſtom, to the uſe of his laſt will, and by his will deviſeth a part to a ſtranger in fee, and dieth, and at the next Court the ſurrender is preſented; by the ſurrender and preſentment the Joynture was ſevered, and the Deviſee

ought to be admitted to the moiety of the Lands, for now by relation, the ſtate of the Land was bound by the ſurrender. *Cook, ſur Litt.* 596.

Debts due to the Bankrupt.

(117.) As to the debts due to the Bankrupt, The Commiſſioners have power to grant, aſſign, or otherwiſe to order and diſpoſe all or any debts due, or to be due, to, or for the benefit of the Bankrupt, by any perſon or perſons whatſoever, or in what form ſoever, to the uſe of the Bankrupts Creditors, according to 13 *Eliz. chap.* 7. And that the ſame grant, aſſignment, or diſpoſition of the ſaid debts, ſhall ſo veſt the property, right, and intereſt of the ſaid debt and debts in the perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned, *&c.* as fully to all intents and purpoſes, as if the Bonds, Bills, Statutes, Judgments, or contracts, whereupon ſuch debt or debts did ariſe, or grow, had been made to or with the perſon or perſons to whom the ſame ſhall be ſo aſſigned: And that after ſuch grant, aſſignment, or diſpoſition made of the ſaid debts, neither the Bankrupt, nor any other to whom any ſuch debt ſhall be due, ſhall have power to recover the ſame, nor to make any releaſe or diſcharge

charge thereof, neither ſhall the ſame be attached, as the debt of the Bankrupt, or ſuch ſaid other perſon or perſons to whom the ſame ſhall be due, by any other perſon or perſons, according to the cuſtom of the City of *London*, or otherwiſe, But that the party or parties to whom the ſaid debt ſhall be aſſigned, ſhall have like remedy to recover the ſame, as fully and lawfully in the name, or names of the perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned, or ordered by the ſaid Commiſſioners, in all reſpects and purpoſes, as the party himſelf might have had: 1 *Jac. chap.* 15. *Provided always, that no debtor of the Bankrupt be hereby indangered for the payment of his or their Debt, truly and* bona fide, *to any ſuch Bankrupt, before ſuch time as he ſhall underſtand, or know that he is become a Bankrupt*, 1 Jac. chap. 15.

(118.) To give means of Recovery; As to the debts of the Bankrupt, aſſigned by the Commiſſioners; the aſſignee, ſhall have the like remedy to recover the ſame, as fully and lawfully, as the party himſelf. 1 *Jac. chap.* 15.

(119.) The Aſſignees of the ſaid debts may ſue for them in their own

names, because they are debts, transferred by Parliament; but yet notwithstanding, in case the action of debt arise upon a Contract, the Defendant may wage his Law; for although the Parliament transferred the debt, yet it is no debt upon Record. *Croke, part* 2. 105. *Bradshaws Case*. A debt due by bond, assigned to two Creditors severally, they may sue severally for it: *Godbolts Reports, fol.* 195.

Lands extended.

(120.) As to Lands, *&c.* of the Bankrupt extended by any pretended debt or accomptant to the King, after such time as the Bankrupt becomes a Bankrupt; such person or persons to whom the Commissioners, or major part, shall bargain, sell, grant or assign the said Lands, *&c.* shall have good remedy, to demand and recover the same, against such persons as detain the same. 21 *Jac. chap.* 19.

(121.) As to Lands, Tenements, *&c.* of the Bankrupts conveyed away upon condition the Commissioners have power to appoint one or more to perform the condition, *vide devant, Sect.* 51.

Creditor barren.

(122.) Another effect of the Commissioners

miſſioners diſtribution, is to bar the Creditor: if any Creditor of the Bankrupts, ſhall not be fully ſatisfied, or otherwiſe contented, by ſuch means as the Statute appointeth, they may have their remedy againſt the Bankrupt (as before they had) for the remainder, and ſhall be only barred for ſo much as they are ſatisfied, or contented for, and no more: 13 *El. cap.* 7.

(123.) Laſtly, to reſtore the capacity of the Bankrupt: The Bankrupt to have the overplus of his eſtate if any be, after that the Creditors are ſatisfied. And that the ſaid Bankrupts after the full ſatisfaction of the ſaid Creditors ſhall have power and authority to recover & receive the reſidue and remainder of the Debts to them owing. 1 *Jac. chap.* 15. Capacity of Bankrupts.

(124.) Next obſerve, the accompt of the Commiſſioners to the Bankrupt: ſuch of the ſaid Commiſſioners as ſhall put the ſaid Commiſſion in execution ſhall upon lawful requeſt to them made by the Bankrupt, not only make a true declaration to the ſaid Bankrupts of imploying and beſtowing of their ſaid Lands, Tenements, offices, Fees, goods, chattels, and debts ſo payed and ſatisfied to their Recompt.

ſaid Creditors, but alſo make payment of the overplus of the ſame (if any ſuch be) to the ſaid Bankrupts, their executors, adminiſtrators, or aſſigns. 13 *Eliz. chap.* 7.

(125.) Remedy for the Commiſſioners in any action brought againſt them for acting by force of the ſaid Statutes, they may plead not guilty, and juſtifie by the authority of the ſaid Acts, and the Plaintiff to reply *de ſon tort de meſme*: and if the Verdict paſs for the defendant, he ſhall have Coſts: 1 *Jac. cap.* 15.

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The End.

THE

THE

RESOLUTIONS

OF THE

Judges,

Upon 13 *Eliz.* and 27 *Eliz.* the Statutes touching Fraudulent Conveyances.

By Way of

APPENDIX;

By The Same Author.

APPENDIX.

The Reſolutions of the Judges, &c.

(1.) THE Statute of 13 *El. cap.* 5. is made perpetual by 29 *El. cap.* 5. The words are; For the avoiding and aboliſhing of feigned Conveyances, covenous and fraudulent Feoffments, Gifts, Grants, and Alienations, Conveyances, Bonds, Suits, Judgments and Executions, as well of Lands and Tenements, as of Goods and Chattels; which have been and are contrived or deviſed of malice, fraud, coven, colluſion or guile; to the end to delay, hinder or defraud Creditors and others of their juſt and lawful Actions, Suits, Debts, Accompts, Damages, Penalties, Forfeitures, Heriots, Mortuaries, and Reliefs; not only to the let or hindrance of the due courſe and execution of Law and Juſtice: but alſo to the overthrow of all true and plain dealing between man and man, *&c.* Fraudulent Conveyances, 13 *El. Chap.* 5.

(2.) Be it therefore declared, ordained and enacted, that all and every Feoffment, Gift, Grant, Alienation, Bargain and Conveyance of Lands, Tenements, Hereditaments, Goods and Chattels, or any of them; or any Leaſe, Rent, Commons, or other profit or charge out of the ſame, or any of them, by writing or otherwiſe; and all and every Bond, Suit, Judgment and Execution, at any time had or made ſince the beginning of the ſaid Queens Reign, or at any time hereafter to be had or made to or for any intent or purpoſe before declared and expreſſed; ſhall be from henceforth deemed and taken [only againſt the perſons their Heirs, Succeſſors, Executors, Adminiſtrators and Aſſigns, whoſe Actions, Suits, Accompts, Damages, &c. by ſuch Practiſes, may or ſhall be in any ways diſturbed] to be clearly and utterly void: Any pretence, colour, feigned conſideration, expreſſion or uſe, other matter or thing to the contrary notwithſtanding

(3.) And be it further enacted, That all and every the parties, to ſuch feigned, covenous, or fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, &c. and other things

things before expreſſed; and being privy, and knowing of the ſame, or any of them, which at any time after the 10*th* day of *June* next coming, ſhall wittingly and willingly put in ure, avow, maintain, juſtifie or defend the ſame, or any of them, as true, ſimple, and done, or made *bona fide*, and upon good conſideration; or ſhall alien or aſſign any of the Lands, Tenements, Goods, Leaſes, or other things before mentioned, to him or them conveyed as aforeſaid, or any part thereof; ſhall incur the penalty and forfeiture of one years value of the ſaid Lands, Tenements, Hereditaments, Leaſes, Rents, Commons, or other profits out of the ſame; and the whole value of the ſaid Goods and Chattels, and ſo much money as ſhall be contained in any ſuch covenous and feigned Bond: The one moiety thereof to the Queens Majeſty, the other to the party grieved, by ſuch feigned and fraudulent Gift, Grant, &c. to be recovered in any of the Queens Courts of Record, by Debt, Bill, Plaint, or Information; wherein no eſſoin, protection, or wager of Law ſhall be admitted for the Defendant or Defendants: And he alſo, being lawfully convicted, ſhall ſuffer im-

priſonment for half a year, without Bail or main priſe.

What the Statute extends not to.

(4.) Proviſoes; Firſt, that the Statute ſhall not extend to common Recoveries, *&c.* Secondly, nor to any perſon or perſons that ſhall uſe any voucher in *Formedon.* Thirdly, Nor to any Conveyances made upon good conſideration, and *bona fide* to any perſon or perſons, corporatien, *&c.* without covin, *&c.*

Gift made by a Papiſt.

(5.) Between *Pauncefoot* and *Blunt* in the *Chequer Chamber*, the caſe was; *Pauncefoot* being a Papiſt, was indicted for his Recuſancie, and he made a gift of all his Leaſes and Goods upon colourable conſideration, and fled beyond Sea, and was after outlawed upon the ſaid Indictment; and ſome thought, that by the Common Law, the ſaid gift was void, in regard it was in prejudice of the Queen; but all agreed that the ſaid Statute of 13 *Eliz.* extends to it; for it extends not only to Creditors, but to all ſuch as have any cauſe of action or ſuit, or any penalty or forfeiture: And it was alſo reſolved, that this word, Forfeiture, ſhall be intended, not only of a forfeiture upon an Obligation, Recognizance, *&c.*

but

but to every thing lawfully forfeited to the King, or a Subject: and therefore if a man to prevent a forfeiture by felony, or outlawry, makes a gift of all his Goods, and after is attained or outlawed, these Goods are forfeited, notwithstanding the Gift, *Cook*, *lib.* 3. 82. Felon

(6.) It was held, that the Statute of 13 *Eliz. cap.* 5. extends to a fraudulent conveyance made by the Heir of the Debtor, of lands descended to him from his deceased Ancestor, as well as by the Debtor himself; for in such case the Heir is Debtor, and the Writ against him is in the *debet* and *detinet*, whereas against an Executor it is in the *detinet* only, *Croke*, part 1. 350. *p.* 1. Per Heir of Debtor.

(7.) It was found by a special Verdict; That a Testator was seized of divers Goods, to the value of 250*l.* and by covin to defraud his Creditors, he made a gift of the said Goods to his Daughters, with a condition, that upon payment of 20*s.* it should be void, and dyed; this was held to be a fraudulent gift, by 13 *Eliz. cap.* 5. and that notwithstanding it, the Goods continued *Assets*, *Croke*, part 1. 810. *p.* 16. *Bethel* and *dw. Stanhope.* Gift upon Condition.

Gift by Executrix, who continues poſſeſſion.

(8.) An Executrix makes a fraudulent gift of the goods of the Teſtator, and inter-marrieth; and her husband taketh upon him payment of Debts, &c. The Goods being ſtill in their poſſeſſion, were held to be ſtill *Aſſets*, *Croke*, part 1. 406. *p.* 16. *Wilcotts*, verſ. *Watſon*.

Conſideration.

(9.) A man maketh a Leaſe for 80 years of Lands, without any conſideration; and he after ſetleth a Joynture upon his Wife of the ſame Lands; ſhe could not avoid that Leaſe, becauſe the Conveyance to her was likewiſe voluntary, and without any valuable conſideration, *Croke*, part 1. 445. *p.* 8. *Upton* and *Baſſett*.

Gift pending a writ.

(10.) *Pierce* was in debt to *Twine* 400 *l.* and to *C.* 200 *l.* *C.* brought Debt againſt *Pierce*, and pending the Writ, *Pierce* being poſſeſs'd of goods to the value of 300 *l.* in ſecret makes a general gift of all his Goods and Chattels, real and perſonal whatſoever, to *Twine*, in ſatisfaction of his debt; and yet notwithſtanding *Pierce* continueth in poſſeſſion, and ſome of them he ſold, and he marked the ſheep with his own mark: And after

ter *C.* had a Judgment againſt *Pierce*, and a *Fieri Facias* to the Sheriff, who coming to make execution by force of the Writ, divers perſons by *Twines* Command reſiſted the Sheriff, claiming the goods as *Twines* by force of the ſaid gift: and this was reſolved to be a fraudulent gift; and that in the ſaid caſe there were theſe ſeveral marks of fraud: Firſt, the gift is general, without any exception, ſo much as of wearing apparel: Secondly, the Donor continueth in poſſeſſion: Thirdly, it was ſecret: Fourthly, it was made pending the writ: Fifthly, here was a Truſt between the parties, for the donor ſtill uſeth the goods as his own: Sixthly, the words of the Deed are, that it was made honeſtly, truly, and *bona fide*, *& clauſulæ inconſuetæ inducunt ſuſpicionem*, Cooke, lib. 3. 81. Twines caſe. Marks of Fraud.

(11.) Secondly, it was reſolved in the ſame caſe, that although here were a Debt due to *Twine*, and a good conſideration of a gift, yet it was not aided by the ſame Proviſo in 13 *Eliz.* which was, that the ſaid Act ſhould not extend to any Eſtate or Eſtates made upon good conſideration, and *bona fide*; for this is not *bona fide*, becauſe it is upon a Truſt, and Conſideration *bona fide.*

and no gift ſhall be conſtrued, to be *bona fidē*, within the ſaid Statute, that is made upon a Truſt, *Cooke*, *lib.* 3. 81. *Twines* caſe.

Advice touching Gifts.

(12.) And it is my Lord *Cookes* advice in the ſaid caſe, that when any gift is to be made in ſatisfaction of a debt: Firſt, that it be publickly done before Neighbours: Secondly, that the goods, *&c.* given, be appraiſed by honeſt men: Thirdly, that the Donee preſently after the gift, take poſſeſſion; for the continuance of poſſeſſion in the Donor, is a mark of Truſt, *Cooke*, *lib.* 3. 81. *Twines* caſe.

(13.) One held divers lands of divers Lords by *Herriot* cuſtom; and to defraud one of the Lords of his *Herriot*, he made a fraudulent gift of all his beaſts *Herriottable*, *viz.* of 20 Horſes: The Lord, who was hereby grieved, bringeth Debt upon 13 *Eliz. tam pro Domina Regina quam pro ſeipſo*, demanding the value of the 20 Horſes; and by *Dyer* and *Harper*, it was well ſaid, by intendment of the Statute; for it may be, he ſhall never come to ſeize his *Herriot*, and if he ſhall recover but the value, the Queen ſhall have the one Moiety: But *Man-*

wood

wood held *contra*; for the other Lords are as recompenſable for their *Herriots*, as the Plaintiff: and *Harper* held, that all the Lords might joyn in an action; but *quere*, ſaith *Dier*, 351. *p.* 23.

(14.) Upon communication of marriage between Sir *R. G.* and the Lady *S.* the ſaid Sir *R. G.* promiſed, before the affiance, to aſſure unto her 1000 *l. per an.* for her Joynture (his eſtate being then 12000 *l. per an.*) and thereupon ſhe married him, without any aſſurance or covenant in that behalf: After, he conveyed by Deed lands of great value to ſome friends of the Ladies [then his Wife] to the uſe of the ſaid Lady for term of 100 years, if ſhe ſo long lived, to commence after his death, and it was indorſed on the back of the Deed, that the intent was, that when there ſhould be a Joynture of 1000 *l. per an.* ſetled on her, according to the firſt agreement, the Leaſe ſhould be void: and it was held, that this was no fraudulent Leaſe, notwithſtanding the Proviſo, to determine it at the Husbands will; for the Court took diverſity between the caſe above, and when a Leaſe is made with a Proviſo, That if the Leſſor pay 10 *s. &c.* the Leaſe

Proviſo, to determine, &c.

Leaſe to be void, becauſe in the later caſe, the ſmallneſs of the ſum payable, makes it apparent to be only a power of revocation; and ſuch a Leaſe a purchaſer ſhall avoid; And the Court held, that the Leaſe aforeſaid being made in purſuance of the firſt promiſe, although no mention of a Leaſe was therein made, yet it was grounded upon a good conſideration, and not fraudulent: And although it was objected, that the Lady had concealed the Leaſe, during her Husbands life, and therefore it ſhould be fraudulent, *&c.* yet, it was anſwered thereunto by the Chief Juſtice; That actions ought to have their reſort to the firſt original, and the Leaſe being good at the firſt, the concealment cannot make it ill, *Croke*, part 2. 455. *p.* 13. *Dame Griffin*, verſ. *Stanhope.*

Evidence.

(15.) *Scire Facias* [upon a Judgment in Debt, againſt *T. H.* who died] againſt the *Terre* Tenants, they pleaded a Feoffment made by *T. H.* long before the Judgment, *abſq; hoc*, that he was ſeized at the time of the Judgment, or after: and iſſue being thereupon taken, the Jury found the Feoffment, & that it was made by covin to defraud the Plaintiff and

and other Creditors; and judged for the Plaintiff, for *T. H.* remained ſtill ſeized as to the Creditors, notwithſtanding the Feoffment: But if iſſue had been directly taken, enfeoffed, or not enfeoffed, it had been found againſt the Plaintiff; for in ſuch caſe, he muſt avoid the Feoffment, by covin, ſpecially pleaded: but here the Iſſue being ſeized or not ſeized by the Feoffment, the covin may be given in evidence, *Hobert*, fol. 72. *Humberton* verſ. *Hongill.*

Fraudulent gifts of Goods.

(16.) Debt brought by *Hawes verſ. Leader* as Adminiſtrator of *Tho. Cookſon*: the Caſe was, that *Tho. Cookſon* for 20 *l.* did grant unto the Plaintiff all his Goods mentioned in a Schedule, annexed to the Deed, and gave poſſeſſion by a Pewter-diſh, with a covenant ſafely to keep them, and to deliver them unto the Plaintiff upon demand, and bound himſelf in 40 *l.* to perform the Covenant; *Tho. Cookſon* dies, and the Plaintiff demands of the Defendant (being the Adminiſtrator of *Cookſon*) the goods, who refuſed to deliver them, and hereupon the Plaintiff brought his action; the Defendant pleaded the Statute of 13 *Eliz. cap.* 5. and that *Cookſon* was indebted to divers

divers in ſums amounting to 100 *l.* [naming in particular, the perſons and the ſums] and being ſo indebted, makes the ſaid gift, being then of thoſe and other goods poſſeſs'd, to the value of 80 *l.* and no more; and that the Deed was made by fraud between them, to deceive his Creditors, and the Plaintiff demurred: Firſt, becauſe the Defendant avers not that the Debts were unpaid: Secondly, becauſe he doth not ſhew that the debts were due by Specialty, for an Adminiſtrator is not liable to other debts: Thirdly, the Defendant ſuppoſeth, that the delivery of the goods would be a *devaſtavit* in him which cannot be; for the goods in the Plaintiffs hands, are lyable to Creditors, as Executor, *de ſon tort demeſne*, if the Deed be fraudulent: Fourthly, It may be the Creditors will never ſue, and then the Defendant might detain the goods for ever, which is inconvenient: Fifthly, the Defendant is not a perſon enabled by 13 *Eliz.* to plead that Plea; for the Statute makes the Deed void only againſt Creditors, but not againſt the party himſelf, his Executors, or Adminiſtrators, judged for the Plaintiff, *Croke*, part 2. 270. *p.* 3. *Hawes verſ. Leaſder.*

(17.) This

(17.) This fraud need not be pleaded: In debt brought against the heir upon an obligation made by his father, the defendant pleaded nothing by descent; and it was found that before the suit begun, the defendant had made a Feoffment in Fee of all his Lands, to defraud the Plaintiff of his action, but this fraud was not pleaded: Resolved by the Court, it need not be pleaded specially, but only given in evidence: First, because 13 *Eliz.* provides generally, that the estate as to the Creditors shall be void; and Acts of Parliament made to suppress fraud, shall be favourably interpreted. Secondly, fraud, and covin are so privily hatched, that the party grieved hath no means to find them out, and then to force the Plaintiff, who is a stranger to plead it, would be against reason, *Cook. lib.* 5. 60. *Gooches Case.* Fraud need not be pleaded, but given in evidence.

(18.) The Court shall not intend fraud, where it is not found by the Jury: *A.* seized of Lands in Fee, holden of *L. L.* of his Mannor of *H.* by Fealty, Rent, and rendring the best beast, after the death of every Tenant in Fee-simple; *A.* by Deed in consideration of love to his Son and heir apparent, and a marriage Fraud not intendible by the Court.

age between his Son and *B.* and for the Sons advancement, infeoffs his ſaid Son of the ſaid Land: the Son afterward to the end *B.* ſhould not be endowed during his fathers life, re-demiſeth the Land to his father for 40 years, if he lived ſo long: The marriage took effect, the Son did his ſuit, and after the Feoffment, the father paid the Lords Rent: the father dies, the Lord taketh his beſt Beaſt for an Herriot, and in Treſpaſs brought, the Jury found all the ſpecial matter, alſo the Statute of 13 *Eliz.* But it was reſolved, That in regard no fraud was found by the Jury, the Court ſhould not intend the ſaid Feoffment to be fraudulently made: and the ſame being found to be made in conſideration of marriage, ſhall not by conſtruction of Law be taken to extend to any other intent, nor to be fraudulent, *Cook, lib.* 10. 56.

Conſideration.

(19.) There are two manner of gifts upon good conſideration: Firſt, upon conſideration of Nature and Blood. Secondly, a valuable conſideration: and the Statute of 13 *Eliz. cap.* 5. and the *Proviſo* therein extends only to a valuable conſideration: for a gift made to defeat others, muſt be made upon as hihg and good,

good consideration, as the things to be defeated are: also every gift made upon trust, is out of the said *Proviso*, because it is not *bona fide*: and a trust is either expressed, or implied; expressed, when it is set down in, or upon the gift; implied, when the gift is made without any consideration, or upon consideration of Nature and blood, *Cook*, *lib.* 3. 81. *b. Twines Case.*

27 Eliz. *Chap.* 4. *Concerning Fraudulent Conveyances.*

Stat. of 27 *Eliz.* Deceit of purchaſers.

1. BY the Statute of 27 *Eliz. cap.* 4. It is ordained and enacted, That all and every Conveyance, Grant, charge, leaſe, eſtate, incumbrance, and limitation of uſe or uſes, of, in or out of any lands, tenements, or other hereditaments whatſoever, had or made at any time heretofore, ſince the beginning of the Queens Reign, or hereafter to be made, for intent or purpoſe to defraud & deceive ſuch perſon and perſons, Bodies Politick, or Corporate, as have purchaſed, or ſhall hereafter purchaſe, in Fee-ſimple, Fee-tail, for life, lives, or years, the ſame Lands, Tenements, or Hereditaments, or any part thereof, ſo formerly conveyed, leaſed, *&c.* or to defraud and deceive ſuch as have, or ſhall purchaſe any Rent, Profit, or Commodity, in or out of the ſame, or any part thereof, ſhall be deemed and taken, only as againſt that per-

perſon and perſons, bodies Politick and Corporate, his and their heirs, ſucceſſors, executors, adminiſtrators, and aſſigns, and againſt all and every other perſon and perſons lawfully having or claiming, by, from, or under them, or any of them, which have purchaſed, or hereafter ſhall ſo purchaſe for money or other good conſideration, the ſame Lands, Tenements, or hereditaments, or any part thereof, or any rent, profit, or commodity, in, or out of the ſame, to be utterly void, fruſtrate, and of none effect.

(2.) And be it further Enacted, That all and every the parties, to ſuch feigned, covenous, and fraudulent gifts, grants, leaſes, *&c.* before expreſſed, or being privy to, or knowing of the ſame, or any of them, which after the 20*th.* of *April* next coming, ſhall wittingly, or willingly put in ure, juſtifie, or defend the ſame, or any of them, as true, ſimple, and done, or made *bona fide*, or upon good conſideration, to the diſturbance, or hinderance of the ſaid Purchaſers, *&c.* ſhall incur the penalty, and forfeiture of one years value, of the ſaid Lands, Tenements, and hereditaments, ſo purchaſed, or charged; the one moiety to the Queen, the other, Penalty.

the party grieved, to be recovered in any of the Queens Courts of Record, by debt, bill, plaint, or information, where no eſſoyn, protection, or wager of Law, ſhall be admitted to the defendant, or defendants, and to ſuffer impriſonment for one half year without Bail or Mainpriſe: 27 *Eliz. chap.* 4.

(3.) Provided, that this Act ſhall not extend to any grant, *&c.* made upon good conſideration, and *bona fide*, nor to any mortgage made *bona fide*, without fraud, and upon good conſideration: 27 *Eliz. chap.* 4.

Conveyance with clauſe of Revocation.

(4.) And it is further enacted, that if any perſon or perſons have ſince the Queens Reign that now is, or ſhall hereafter make any conveyance, gift, grant, demiſe, charge or limitation of uſe or uſes, of, in, or out of any lands, tenements, or hereditaments, with any clauſe or condition of Revocation, determination, or alteration, at his or their will and pleaſure of ſuch conveyance, *&c.* of, in, or out of the ſaid lands, tenements, or hereditaments, or any part or parcel thereof; and after ſuch conveyance, gift, *&c.* ſo had, or made, ſhall bargain, ſell, demiſe, grant,

grant, convey, or charge the ſame Lands, Tenements, or Hereditaments, or any part thereof, to any perſon or perſons, bodies politick or corporate, for money, or other good conſideration payed or given; [the ſaid firſt conveyance, *&c.* not being by him revoked, made void, or altered, according to the power reſerved;] That then the ſaid former conveyance, aſſurance, *&c.* as touching the ſaid Lands, Tenements, and Hereditaments, ſo after bargained, *&c.* againſt the ſaid Bargainees, Leſſees, and Grantees, and every of them, their heirs, ſucceſſors, executors, adminiſtrators and aſſigns ſhall be void, *&c.* 27 *El. cap.* 4.

(5.) *J. C.* had a Leaſe for 60 years (if he lived ſo long) and he forged a Leaſe for ninety years abſolutely; and by Indenture reciting the forged Leaſe, he bargained and ſold the ſame, and all his intereſt in the Land to *R. G. R. G.* is no purchaſer for valuable conſideration, within the ſaid Statute of 27 *Eliz.* becauſe he contracted not for the true and lawful intereſt; and although by the words, his true intereſt paſſed: yet he gave no valuable conſideration for it: *Cook upon Littl. fol.* 3. *b.* Leaſe forged.

The Act binds the King.

(6.) One who intended to ſell his Lands, had by fraud conveyed the ſame by Deed inrolled to the Queen: In this caſe the purchaſer ſhall enjoy the Land againſt the Queen, by the Statute of 27 *Eliz.* for that Act being general and made in ſuppreſſion of fraud, ſhall bind the Queen: *Cook, lib.* 11. 74. *a. Magdalen Colledg Caſe.*

Future power of Revocation.

(7.) A man conveyed his Lands to the uſe of himſelf for life, and after to the uſe of divers others of his blood, with a future power of Revocation, *viz.* after ſuch a Feaſt, or after the death of ſuch an one, *&c.* and before the power of Revocation commenceth, he, for valuable conſideration doth bargain and ſell the ſame lands to another, and his heirs: this bargain and ſale is within the remedy of 27 *Eliz. cap.* 4. for although the Statute ſaith, [*the firſt conveyance not by him revoked*] which ſeems by the literal ſence to be intended of a preſent power of Revocation, for no revocation can be made by force of a future power, befor it comes in *eſſe*, yet it was held that the intent of the Act was, that ſuch voluntary Conveyance that was originally ſubject to a power of Revocation, be it in preſent

ſent or in future, ſhall not ſtand againſt a purchaſer, who cometh in upon good and valuable conſideration, and *bona fide*, *Cook*, *lib.* 3. 82. *Twines Caſe*.

(8.) Reſolved, That if a man hath power of Revocation, and after to the intent to defraud a purchaſer, he levy a Fine, or make a Feoffment, or other conveyance to a ſtranger, whereby he extinguiſheth this power; and after he bargain and ſell the lands to another for valuable conſideration, the Bargainee ſhall enjoy the Land; for as to him, the Fine, Feoffment, or other conveyance, by which the condition was extinct, was void by the ſaid Act of 27 *Eliz.* And it was ſaid, that the ſaid Act made voluntary Conveyances, with power of Revocation, in an equal degree as to purchaſers, with conveyances made to defraud purchaſers: *Cook*, *lib.* 3. 82. *b. Twines Caſe*. Power of Revocation extinguiſhed.

(9.) If a man make a Leaſe for years by covin and fraud, and after make another Leaſe *bona fide* without Fine paid, or rent reſerved; the ſecond Leaſe ſhall not avoid the firſt: for firſt it was agreed, that by the Common Law, an Conſideration.

Eſtate made by fraud ſhall be only void againſt him that had a former right, and not againſt him that had a puiſne right or intereſt. Secondly, no purchaſer ſhall avoid a precedent conveyance made by fraud or covin, but he that is a purchaſer for money, or other valuable conſideration: and the words [*good conſideration*] in the Act, ought to be underſtood of valuable conſideration only, and not a conſideration of nature or blood, *&c. Cook, lib.* 3. 83. *Twines Caſe.*

(10) A man of little capacity, and not able to govern the Lands deſcended to him, and being diſpoſed to riot and diſorder, by mediation of friends, openly conveyed his lands to them, upon truſt and confidence, that he ſhould take the profits for his maintenance; and that he ſhould not have power to waſte and conſume them: and after being ſeduced by perſons, he ſold his Lands to them for a ſmall ſum of money: And this bargain and ſale, although it was for money, was held to be out of 27 *Eliz.* which Act was made againſt fraud and deceit, and ſhall not aid any purchaſer that cometh not to the Land for good conſideration, lawfully and without fraud or deceit; but

but ſuch a conveyance made upon truſt, were void as to him that purchaſeth it for valuable conſideration, and *bona fide*, *Cook*, *lib.* 3. 83. *b. Twines Caſe.*

(11.) If a man ſeized of Lands in Fee make a fraudulent Conveyance, to the end to deceive and defraud a purchaſer, againſt the Statute of 27 *Eliz.* and continueth in poſſeſſion, and is reputed as owner, and *B.* enter into communication with *A.* for the purchaſe of it, and by accident *B.* hath notice of this fraudulent conveyance, and yet notwithſtanding he concludes with *A.* and taketh an aſſurance from him; yet *B.* ſhall avoid this fraudulent conveyance, by the ſaid Act of 27 *Eliz.* notwithſtanding his notice; for the Act by expreſs words makes the fraudulent conveyance void, as to a Purchaſer, for the notice of a Purchaſer, cannot make that good, which by Act of Parliament is void, as to it: *Cook*, *lib.* 5. 60. Notice of the fraud.

(12.) One, after Marriage, voluntarily aſſigns a Leaſe for years, as it were in joynture for his wife, and took the profits, and after ſold it to one who had no notice of this conveyance: this was held to be within 27 *Eliz.* although at the Voluntary Conveyance

the first it was not made upon trust, to be revoked, *&c.* because it was a voluntary conveyance at the first, and shall be intended fraudulent at the beginning: But if at the time of the Marriage, or after, by reason of a portion given by his wives friends, in recompence thereof, and for a Provision for maintenance of his wife, he had made an assignment of such a Lease to his wives friends, and had after taken the profits thereof, as in reason he ought during his life, and had then sold that Term, yet it had not been within the said Statute. *Crook, part* 2. 158. *Colvil vers. Parker.*

(13.) A man Covenants for natural love, *&c.* to stand seized to the use of himself for life, the remainder to his Son in Tail, with a power of Revocation, and a *Proviso* to make Leases for 21 years, and after makes a Lease for 21 years, for 30 *lib.* Fine paid. Resolved, That notwithstanding this voluntary and revokeable conveyance, yet the Lease for years was absolutely good, by 27 *Eliz.* and as to the Lessee, the conveyance shall be construed, as if it had been revoked, and that the Lessor was then Tenant in Fee; and it was also resolved, That in case of

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a Leaſe for years, made as before, there had been a Rent only reſerved, it had been a good conſideration, and within the Statute; and the making of ſuch Leaſe was a revocation of the firſt Eſtate according to the Leaſe, *Crook, part* 2. 181. *p.* 19. Alſo it was reſolved, that the ſaid Leaſe for years; reſpect being had only to the Proviſo, and power thereby given, was void; for it being only a covenant, and the conſideration not extending to the Leaſe for years, no uſe is raiſed to him thereby, *ibidem.*

(14.) Grandfather, Father, and Son; the Grandfather, upon the Fathers marriage, makes the Wife of the Father a Joynture; and at the ſame time, covenants to demiſe other Tenements to the Father for 1000 years, and after maketh ſuch demiſe accordingly, to commence after his death; in which was a Proviſo to make the ſame void, upon the Fathers dying without iſſue, or making a Leaſe not reſerving the ancient Rent; the Father after aſſigns the ſaid Leaſe to the uſe of his Son (an infant) to the intent, that it ſhould not drown by the deſcent of the reverſion, and with the colourable

ble purpoſe and intent, that the infant ſhould pay debts, *&c.* The Grandfather dies, the Father enters into the Lands, and taketh the Profits, and makes Leaſes, and doth other Acts as Owner; and neither the Aſſignees nor Infant took any Profits, or paid any Debts; and the Aſſignment was made to divers perſons of good reputation, but the aſſignment it ſelf was delivered into the hands of a perſon of mean quality; The Father after bargains and ſells the ſaid Lands for a great ſum of money by Deed inrolled: By all which marks, the ſaid Leaſe and Aſſignment were taken to be fraudulent, *Cook, lib. 6. 72. a. Burrells* caſe.

(15.) Reſolved, (in the ſaid Caſe) That whereas the words of the ſaid Act of 27 *Eliz.* are, That all and every Conveyance, Grant, *&c.* for the intent to defraud or deceive ſuch perſons as have purchaſed, or ſhall purchaſe the ſame Lands, *&c.* ſhall be deemed, only againſt ſuch Purchaſer, void: yet if the Father make a Leaſe by fraud and covin of his Lands, to defraud others, to whom he ſhall demiſe or ſell it, [as all fraudulent demiſes ſhall be intended,] and

and before the Father ſells or demiſeth it, he dieth; and the Son, knowing or not knowing the ſaid Leaſe, ſell the Lands upon good conſideration; In this caſe the Vendee ſhall avoid the ſaid Leaſe by the ſaid Act of 27 *Eliz.* for the words of the Act are general, and it is not needful that he who ſold the Land, ſhould make the former Eſtate or incumbrance; But if the Eſtate be fraudulent, whoſoever is the ſeller, the Purchaſer ſhall avoid ſuch fraudulent Eſtate: Alſo, it was reſolved, That although the Father had nothing of Inheritance in the Land, at the time of the aſſignment of the Leaſe, but the inheritance was in the Grandfather, yet when the Grandfather dieth, and the Father ſells the Land, his Vendee ſhall avoid the ſaid Term: for if he had bargained, and ſold the Term only, the bargain ſhould have avoided the fraudulent aſſignment, and by conſequence, the Vendee of the whole Fee-ſimple ſhall avoid it, *Cook, lib. 6. 72. a. b. Burrells* caſe.

(16.) In Treſpaſs: The Plaintiff and Defendant claim by ſeveral Leaſes from the ſame man: The Plaintiff in his Declaration avers the defendants Leaſe

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to be made by fraud, but ſheweth not any conſideration payed by himſelf: whereupon the Defendant Demurs: *Yelverton:* at Common Law there was not any fraud remedied, to defeat an after purchaſe, but that only which was committed to defeat a former intereſt, which was granted; and 27 *El.* doth not aid it, for here is no conſideration payed for the ſecond Leaſe, no more than for the firſt: *Lukener contra.* A thing obtained by a mans own act, makes a man a purchaſer within the ſaid Statute, and the fraud is confeſſed by the Demurrer; *Anderſon*: the confeſſion of the fraud is not material, in regard the Plaintiff is not ſuch a perſon, as ought to have benefit thereby, and within the remedy and proviſion of the Act; and by that Act a fraudulent conveyance is not made void againſt all, but only againſt ſuch as come in upon valuable conſideration: *Wamſey*, according; and he ſaid, that a fraudulent gift of goods, remains good againſt the donor, but not againſt his Creditor, by 13 *Eliz. Crook, part* 1.445.*p.*8. *Upton verſ. Baſſet.*

FINIS.